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FEDERAL COMMUNICATIONS COMMISSION REPORTS
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Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

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INDEX

	Page
Alabama Educational Television Commission; docket No. 19422 et al. (F.C.C. 73–499)	1051
Anderson, L. L., Reverend, et al.; file No. BR–872 (F.C.C. 73–388)	1052
Channel Spacing in Aeronautical Radionavigation Band; docket No. 19590 (F.C.C. 73–511)	1054
Common Carrier Service to CATV Systems; (F.C.C. 73–500)	1062
Communications Satellite Corp.; file No. 17–CSS–P–(3)–73 et al. (F.C.C. 73–503)	1064
Crain, Albert L., et al.; docket No. 19186 et al. (F.C.C. 73R–192)	1066
Erway, Guy S., et al.; docket No. 19601 et al. (F.C.C. 73R–174)	1071
FM Table of Assignments; docket No. 19690 (F.C.C. 73–520)	1077
Gilroy Broadcasting Co., Inc., et al.; docket No. 19681 et al. (F.C.C. 73R–162)	1081
International Record Carriers' Communications; docket No. 19660 (F.C.C. 73–532)	1082
KACY, Inc.; application for construction permit (F.C.C. 73–483)	1090
Lafourche Communications, Inc.; file No. CSR–299 (F.C.C. 73–515)	1093
North American Communications Corp.; file No. BPTTV–4634 (F.C.C. 73–486)	1094
Pacific National Bank of Seattle; file No. BTC–6671 (F.C.C. 73–415)	1098
Proposed New Tariff Requirements; docket No. 19741 (F.C.C. 73–513)	1099
Radio Para La Raza; re petition for revocation of license of Station KSLV (F.C.C. 73–506)	1102
Southern Broadcasting Co. et al.; docket No. 18906 et al. (F.C.C. 73–477)	1109
TelePrompter Corp.; re request for advisory opinion (F.C.C. 73–344)	1115
Television Network Identification Signals (F.C.C. 73–370)	1116
Vogel-Ellington Corp.; docket No. 18897 (F.C.C. 73R–161)	1120
Voice of Reason, Inc.; docket No. 18710 (F.C.C. 73–476)	1121
Western Union Telegraph Co.; file No. 1–DSE–P–71 (F.C.C. 73–501)	1123
Western Union Telegraph Co., The; file No. TD 20157 (F.C.C. 73–514)	1125
WVOC, Inc., et al.; docket No. 19272 et al. (F.C.C. 73R–189)	1130

F.C.C. 73–499

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application ALABAMA EDUCATIONAL TELEVISION COMMISSION WAIQ (ED–TV), MONTGOMERY, ALA. For Renewal of Licenses	Dockets Nos. 19422–19430 Files Nos. BRET–69, BRET–5, BRET–7, BRET–14, BRET–87, BRET–130, BRET–147, BRET–109, BLET–267

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 18, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON ABSTAINING FROM VOTING.

1. The Commission has under consideration a Motion for Waiver of Rules to Consider Application for Review, filed November 17, 1972, by Linda Edwards, Eugene Farrell, and Steve Suitts ("Edwards").[1] Movants at an earlier stage in this proceeding had served interrogatories upon AETC, answers to two of which were refused by AETC on the grounds of irrelevancy and immateriality. Thereupon Edwards moved the Presiding Judge for an order to compel answers by AETC. On September 29, 1972, the Presiding Judge denied the motion to compel and on October 19, 1972 the Presiding Judge denied movants permission to appeal to the Review Board (47 CFR 1.301(b)).

2. Despite the provision for finality of the Presiding Judge's ruling (47 CFR 1.301(b)), movants seek a waiver of the rule under 47 CFR 1.3 in order that they may file an appeal with the Review Board. We shall not grant such waiver. Our intent in providing that the Presiding Judge's ruling in cases of this type should be final was to decrease the volume of appeals except in cases of egregious error—not to add another echelon of appeal. In any event the hearing has commenced and the evidence may be elicited by examination of witnesses or its exclusion may be made the subject of exception.

3. Accordingly, IT IS ORDERED, That the Motion for Waiver of Rules by Edwards IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] Oppositions were filed on November 29, 1972 by the Chief, Broadcast Bureau and Alabama Educational Television Commission ("AETC").

109–040—73——1

F.C.C. 73-388

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

In Re Request by REVEREND L. L. ANDERSON AND DALLAS COUNTY PROGRESSIVE MOVEMENT FOR HUMAN RIGHTS For Extension of Time To File Petition To Deny Renewal Application for Station WHBB, Selma, Ala.	BR-872

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

APRIL 17, 1973.

LEWIS J. PAPER, ESQUIRE,
Citizens Communications Center,
1812 N Street NW.,
Washington, D.C. 20036

DEAR MR. PAPER: This refers to your letter of March 1, 1973, on behalf of Reverend L. L. Anderson and the Dallas County Progressive Movement for Human Rights, whereby you request an extension of time to file a petition to deny the license renewal application for Station WHBB, Selma, Alabama (BR-872). Alternatively, you argue that the WHBB application was substantially incomplete when timely filed with the Commission on January 2, 1973 and should have been dismissed pursuant to Rule 1.566. Talton Broadcasting Company, the licensee of Station WHBB, has not objected to the requested extension of time.

Section 1.580(i) of the Commission's rules provides, in substance, that a petition to deny a license renewal application must be filed on or before the first day of the last full month of the station's license term. The license for Station WHBB expired on April 1, 1973. Accordingly, a timely petition to deny was due on March 1, 1973. Absent good cause shown, the Commission will not grant a waiver of Rule 1.580(i) to authorize the filing of a petition after that date. See, *e.g.*, *WSM Incorporated*, 24 FCC 2d 561 (1970) and *Trumbull County N.A.A.C.P.*, 25 FCC 2d 827 (1970).

In support of your request for an extension of time you state that Talton Broadcasting Company failed to submit with its application the required exhibits relating to the method used to ascertain the community's needs and interests, the significant needs and interests ascertained, and the typical and illustrative programs which will be broadcast during the forthcoming license term to meet those ascertained needs. Further, you allege that the omission of these ascertainment exhibits from the WHBB application forestalled your ability to scrutinize the licensee's performance and to participate effec-

tively in the license renewal process. You therefore urge the Commission to extend the time for filing a petition to deny until sixty (60) days after the licensee tenders the missing material. On March 6, 1973, Talton Broadcasting Company amended the WHBB application to include the omitted ascertainment exhibits.

In view of the foregoing uncontroverted allegations, we believe that you have demonstrated good cause for waiver of Section 1.580(i) of our rules. Accordingly, the time for filing a petition to deny by Reverend L. L. Anderson and the Dallas County Progressive Movement for Human Rights against Station WHBB, Selma, Alabama, is extended to May 7, 1973.

Commissioner Robert E. Lee absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-511

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 2 AND 87 OF THE RULES TO PROVIDE 50 kHz CHANNEL SPACING IN THE AERONAUTICAL RADIONAVIGATION BAND 108–117.95 MHz	Docket No. 19590 RM–1888

REPORT AND ORDER

(Adopted May 16, 1973; Released May 21, 1973)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; AND WILEY CONCURRING IN THE RESULT.

1. Acting on the request of the Department of Transportation, Federal Aviation Administration (FAA) to consider changes to the rules to provide for additional channels for aeronautical navigation aids, a Notice of Proposed Rule Making (NPRM) was adopted by the Commission on 9/20/72 and released 9/26/72. The comment period has passed.

2. The Notice of Proposed Rule Making proposed additional channels for the aeronautical navigation aids by channel splitting from the current 100 kHz to 50 kHz in the band 108–117.95 MHz. This would allow the FAA to both increase and improve the safety system utilizing the VOR, ILS and TACAN/DME navigation aids as programmed in the National Aerospace System (NAS) plan. Presently, the shortage of frequencies has made it impossible to provide for the full complement of navigation aids required, particularly in areas of radio frequency congestion. The congestion has become severe in the Boston/New York/Washington, Chicago/Detroit, and San Francisco/Los Angeles areas. Future implementation of FAA planned new installations would add to the problems in these areas as well as add other areas to the congestion problem.

3. We agree with the FAA that there is an immediate need to provide additional channels by channel splitting. We consider the FAA implementation plan of initially confining the assignment of split-channel frequencies to those areas where 100 kHz assignments are impossible or impractical in terms of the number of frequency changes required at existing facilities, to be feasible.

4. Comments were received from the following: Aeronautical Radio Inc. (ARINC) and the Air Transport Association of America (ATA), joint comment; Collins Radio Company (Collins); RCA Corporation (RCA); Aircraft Owners and Pilots Association (AOPA); General Aviation Manufacturers Association (GAMA); the 3M Company; Aeronautical Flight Test Radio Coordinating Council

(AFTRCC); McCreary Tire and Rubber Co. (McCreary). No reply comments were filed.

5. ARINC/ATA support the provisions of 50 kHz channel spacing and the proposals to impose the more demanding equipment stability requirements. However, they point out that the "optimistic view taken by the Commission in Paragraph 7 of the instant notice" does not entirely reflect the correct view as quick and economical modification of airline equipment is not possible in some cases. They report that a number of aircraft currently in operation will require rather expensive replacement or retrofit which, in some cases, will even require servicing of the airframe. Even so, they support the proposed channel splitting and tolerance changes. AFTRCC supported the ARINC/ATA filing which they found fully consistent with the views of their organization.

6. AOPA supported the proposed rule making but expressed some concern over the FAA's proposal to protect airborne receivers operating on 100 kHz spacing. They recognized that the FAA's implementation procedure is beyond the scope of this docket, but believe it to be an important consideration. AOPA indicates their specific concern to be the need for essential protection of the total areas of all VOR coverage, not solely the areas served by the present airways. This would accommodate users of random route area navigation tracks as well as those flying under visual flight rules. AOPA, in commenting on Paragraph 7 of the notice, reports that they are reliably informed that at least one make of airframe glide path receiver that is heavily used by general aviation can easily be field modified to achieve 40 channel receiver capability for a modest price.

7. GAMA states the opinion that proceeding to split the channels to provide 50 kHz spacing is necessary to provide for installation of the required number of instrument landing systems. GAMA, however, suggests that the proposed 0.002 percent frequency tolerance is not stringent enough. They recommend instead that the ground transmitter tolerance be reduced to 0.0005 percent so that the airborne tolerance may be relaxed accordingly. Their reasoning is that overall economy will result because of the limited number of ground transmitters compared to the airborne. They also state their opinion that the ground transmitters, which operate on a single channel, can more easily achieve the improved tolerance.

8. RCA concurred with the proposal with respect to channel splitting and agreed that it is essential to tighten ground transmitter frequency stability requirements. Their comments additionally support and amplify GAMA's recommendation to establish a 0.0005 percent tolerance for the ground transmitters. They suggest that such a relatively lenient tolerance for ground equipment will impose an inequitable economic burden on the users, that is, the owners of the airborne equipment. This is because the multi-channel airborne receivers generally require a number of crystals and operate in a wide environmental range, necessitating more costly design features and manufacturing controls.

9. In their comments, Collins recognized the need for channel splitting and, in principle, supported the proposal to accommodate 50 kHz spacing. However, Collins pointed out what they considered to be a potential problem area. They indicated that a frequency selection error

of 50 kHz can cause an erroneous bearing indication without activation of the flag warning. Collins reported that an FAA Advisory Circular (No. 90–58, dated February 16, 1972) points out this situation as well as stating that a manufacturer of airborne VOR equipment is investigating methods of eliminating the problem. Collins stated that the manufacturer involved is Collins Radio Company and that they had not yet completed the contract performance nor compiled and submitted the resultant data. (Since that time, it has been completed and the data considered.)

10. Comments from McCreary were very brief and to the point. Their statement regarding the channel split is, "If going to 50 kHz channel spacing for navigational aids will give us more VORs and/or more ILS, we are very much in favor of this move being made."

11. Along with McCreary, another user, the 3M Company, recognized the need for more channels. 3M reported that they intend to quickly implement a plan to convert all their VOR receivers to 50 kHz separation and 40 channel glide slope. They present their major concern as being the need to have as much advance notice as possible from FAA as to planned implementation of 50 kHz stations. To amplify that concern, the 3M Company says in part, "Past experience regarding subjects similar to this kind has revealed that the aircraft are modified far in advance of FAA's actual implementation capabilities; therefore, we would like to have FAA's complete schedule of which airports and VOR stations will receive either new facilities or changed frequencies prior to January 1, 1973."

12. It was evident from several of the comments that investigation beyond that already performed was necessary. Specifically, the comments of RCA, Collins and ARINC were directed to FAA for their analysis and coordination with the FCC staff. In regard to the matter of ground station tolerance, the FAA proposed 0.005 percent stability in the NPRM on the "Selection Order: U.S. National Aviation Standard for the VORTAC System" (Federal Register 34 F.R. 18050). The FAA after consideration of the comments received and all other factors such as the cost of airborne receivers, attainable crystal stability for ground transmitters, oscillator load/supply voltage variations, crystal aging, and frequency measurement capability (accuracy) determined that the 0.002 percent stability was realizable at a reasonable cost. The 0.002 percent tolerance is contained in the existing VORTAC standard (Federal Register 35 F.R. 8956). We agree with the FAA determination and with AOPA's comments as to conversion costs and determine that the 0.002 percent stability as proposed in our NPRM is the most viable tolerance. The Collins concern about adjacent channel interference was well founded. The recently completed receiver testing program, however, did not indicate a need for a policy change in regard to the channel splitting but did establish the need for FAA revision of the desired to undesired (D/U) criterion for 50 kHz removed signals for both the interim and final implementation periods. Additionally, the FAA has revised the final adjacent channel criteria to preclude the use of one facility while in the vicinity of another facility operating on an adjacent channel. Also, correct airborne operator channel selection is an operator responsibility or can be a feature of the airborne receiver if a receiver mistuning "flag" option is implemented. In

any event, the implementation by both the FAA and the users cannot proceed without the availability of the frequencies, and we consider there to be no need for a revision to 0.002 tolerance as proposed in the NPRM for ground equipment in the split channel environment.

13. In order that it will be possible for the FAA, the users and the equipment manufacturers to proceed toward the implementation of the 50 kHz channelization in accordance with the FAA program, we are making the split channels available. We urge the FAA to provide as much advance notice as possible to the users as the implementation plan is developed and programmed.

14. ARINC and ATA reported their belief that the inclusion of channel pairings for glide path and DME, as implied but not detailed in the NPRM, should be included in Part 87 of the FCC rules since they must be paired with the VOR and localizers. FAA agrees. There appears to be no reason to believe that such pairings in the rules would impose a restrictive penalty on the implementation program. We, therefore, have amended Sections 87.501(a), (b) and (h) to provide those frequency pairings.

15. There is a consensus that the earliest possible provision of the new channels is desirable. The investigation and coordination required in processing this proceeding have taken us past the initially proposed effective date of January 1, 1973 for equipment frequency tolerance change. That date is changed to reflect a suitable early date beyond the adoption date of this Report and Order.

16. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i), 303(r), and 318 of the Communications Act of 1934, as amended, Parts 2 and 87 of the Commission's rules ARE AMENDED, effective June 28, 1973, as set forth in the attached Appendix.

17. IT IS FURTHER ORDERED, That, the proceeding in this Docket IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

1. In Part 2, Subpart B, Section 2.106 Table of Frequency Allocations the listings in columns 10 and 11 of the band 108–117.975 MHz are amended to read as follows:

§ 2.106 Table of Frequency Allocations.

Frequency (MHz) (10)	Nature of (services/stations) (11)
*	* * * * *
108.05	Omni-directional range—(VOR).
108.10	Localizer.
108.15	Do.
108.20	Omni-directional range—(VOR).
108.25	Do.
108.30	Localizer.
108.35	Do.
108.40	Omni-directional range—(VOR).
108.45	Do.
108.50	Localizer.
108.55	Do.
108.60	Omni-directional range—(VOR).
108.65	Do.
108.70	Localizer.
108.75	Do.
108.80	Omni-directional range—(VOR).
108.85	Do.
108.90	Localizer.
108.95	Do.
109.00	Omni-directional range—(VOR).
109.05	Do.
109.10	Localizer.
109.15	Do.
109.20	Omni-directional range—(VOR).
109.25	Do.
109.30	Localizer.
109.35	Do.
109.40	Omni-directional range—(VOR).
109.45	Do.
109.50	Localizer.
109.55	Do.
109.60	Omni-directional range—(VOR).
109.65	Do.
109.70	Localizer.
109.75	Do.
109.80	Omni-directional range—(VOR).
109.85	Do.
109.90	Localizer.
109.95	Do.
110.00	Omni-directional range—(VOR).
110.05	Do.
110.10	Localizer.
110.15	Do.
110.20	Omni-directional range—(VOR).
110.25	Do.
110.30	Localizer.
110.35	Do.
110.40	Omni-directional range—(VOR).
110.45	Do.
110.50	Localizer.
110.55	Do.
110.60	Omni-directional range—(VOR).
110.65	Do.
110.70	Localizer.
110.75	Do.
110.80	Omni-directional range—(VOR).
110.85	Do.
110.90	Localizer.
110.95	Do.
111.00	Omni-directional range—(VOR).
111.05	Do.
111.10	Localizer.
111.15	Do.
111.20	Omni-directional range—(VOR).
111.25	Do.
111.30	Localizer.
111.35	Do.
111.40	Omni-directional range—(VOR).
111.45	Do.
111.50	Localizer.
111.55	Do.
111.60	Omni-directional range—(VOR).
111.65	Do.
111.70	Localizer.
111.75	Do.
111.80	Omni-directional range—(VOR).
111.85	Do.
111.90	Localizer.
111.95	Do.
112.00–117.95 (NG 34).	Omni-directional range—(VOR).
*	* * * * *

2. In Section 87.65(a) the present footnote designators and footnotes are deleted, subparagraphs (5) and (7) are amended, new subparagraphs (8) and (9) and new footnotes 1 and 2 are added to read as follows:

§ 87.65 Frequency stability.

(a) * * *

(5) Band 100 to 136 MHz:	
Land stations	[1] 0.003
Mobile stations	
Survival craft stations	.005
Aircraft and all other mobile stations	.005
Radionavigation stations	[2] .002
* * * * * * *	
(7) Band 470 to 960 MHz: All stations	.01

[1] The tolerance shown is applicable to all transmitters except that the use of types of transmitters which meet a tolerance of .005 percent, and which were licensed before January 1, 1966, will be permitted to continue indefinitely.

[2] The tolerance shown in the table is applicable to transmitters first licensed after July 1, 1973. A tolerance of .005 is applicable to transmitters licensed before July 1, 1973. All transmitters to be used in the National Airspace System, however, must have .002% stability after July 1, 1973.

* * * * * * *

(8) Band 960 to 1215 MHz:
Land stations ..... .002
Aircraft stations ..... .01
(9) All stations on frequencies above 1215 MHz ..... .01

* * * * * * *

3. Part 87, Subpart N, Sections 87.501(a), (b), (d) and (h) are revised to read as follows:

§ 87.501 Frequencies available.

* * * * * * *

(a) Localizer stations with simultaneous radiotelephone channels and their associated Glide Path stations. The frequencies:

Localizer (MHz):	*Glide path (MHz)*	Localizer (MHz):	*Glide path (MHz)*
108.1	334.7	110.1	334.4
108.15	334.55	110.15	334.25
108.3	334.1	110.3	335.0
108.35	333.95	110.35	334.85
108.5	329.9	110.5	329.6
108.55	329.75	110.55	329.45
108.7	330.5	110.7	330.2
108.75	330.35	110.75	330.05
108.9	329.3	110.9	330.8
108.95	329.15	110.95	330.65
109.1	331.4	111.1	331.7
109.15	331.25	111.15	331.55
109.3	332.0	111.3	332.3
109.35	331.85	111.35	332.15
109.5	332.6	111.5	332.9
109.55	332.45	111.55	332.75
109.7	333.2	111.7	333.5
109.75	333.05	111.75	333.35
109.9	333.8	111.9	331.1
109.95	333.65	111.95	330.95

(b) Glide Path stations: The band 328.6 to 335.4 MHz paired with Localizers as shown in (a) above.

* * * * * * *

(d) Omni-directional Radio Range (VOR) stations: 112.05 MHz through 117.95 MHz and the following frequencies in the 108–112 MHz band.

MHz	*MHz*	*MHz*	*MHz*
108.20	109.20	110.20	111.20
108.25	109.25	110.25	111.25
108.40	109.40	110.40	111.40
108.45	109.45	110.45	111.45
108.60	109.60	110.60	111.60
108.65	109.65	110.65	111.65
108.80	109.80	110.80	111.80
108.85	109.85	110.85	111.85
109.00	110.00	111.00	112.00
109.05	110.05	111.05	112.05

* * * * * * *

(h) (1) The band 960–1215 MHz is available for the use of ground based facilities and directly associated airborne electronic aids to air navigation. When distance measuring equipment (DME) is intended to operate in association with a single VHF navigation facility in the 108–117.975 MHz frequency band, the DME operating channel shall be paired with the VHF channel as shown in the following table.

DME channelling and pairing

VHF channel (MHz)	Airborne interrogating frequency (MHz)	Ground reply frequency (MHz)	VHF channel (MHz)	Airborne interrogating frequency (MHz)	Ground reply frequency (MHz)
108.00	1,041	978	111.90	1,080	1,017
108.05	1,041	1,104	111.95	1,080	1,143
108.10	1,042	979	112.00	1,081	1,018
108.15	1,042	1,105	112.05	1,081	1,144
108.20	1,043	980	112.10	1,082	1,019
108.25	1,043	1,106	112.15	1,082	1,145
108.30	1,044	981	112.20	1,083	1,020
108.35	1,044	1,107	112.25	1,083	1,146
108.40	1,045	982	112.30	1,094	1,157
108.45	1,045	1,108	112.35	1,094	1,031
108.50	1,046	983	112.40	1,095	1,158
108.55	1,046	1,109	112.45	1,095	1,032
108.60	1,047	984	112.50	1,096	1,159
108.65	1,047	1,110	112.55	1,096	1,033
108.70	1,048	985	112.60	1,097	1,160
108.75	1,048	1,111	112.65	1,097	1,034
108.80	1,049	986	112.70	1,098	1,161
108.85	1,049	1,112	112.75	1,098	1,035
108.90	1,050	987	112.80	1,099	1,162
108.95	1,050	1,113	112.85	1,099	1,036
109.00	1,051	988	112.90	1,100	1,163
109.05	1,051	1,114	112.95	1,100	1,037
109.10	1,052	989	113.00	1,101	1,164
109.15	1,052	1,115	113.05	1,101	1,038
109.20	1,053	990	113.10	1,102	1,165
109.25	1,053	1,116	113.15	1,102	1,039
109.30	1,054	991	113.20	1,103	1,166
109.35	1,054	1,117	113.25	1,103	1,040
109.40	1,055	992	113.30	1,104	1,167
109.45	1,055	1,118	113.35	1,104	1,041
109.50	1,056	993	113.40	1,105	1,168
109.55	1,056	1,119	113.45	1,105	1,042
109.60	1,057	994	113.50	1,106	1,169
109.65	1,057	1,120	113.55	1,106	1,043
109.70	1,058	995	113.60	1,107	1,170
109.75	1,058	1,121	113.65	1,107	1,044
109.80	1,059	996	113.70	1,108	1,171
109.85	1,059	1,122	113.75	1,108	1,045
109.90	1,060	997	113.80	1,109	1,172
109.95	1,060	1,123	113.85	1,109	1,046
110.00	1,061	998	113.90	1,110	1,173
110.05	1,061	1,124	113.95	1,110	1,047
110.10	1,062	999	114.00	1,111	1,174
110.15	1,062	1,125	114.05	1,111	1,048
110.20	1,063	1,000	114.10	1,112	1,175
110.25	1,063	1,126	114.15	1,112	1,049
110.30	1,064	1,001	114.20	1,113	1,176
110.35	1,064	1,127	114.25	1,113	1,050
110.40	1,065	1,002	114.30	1,114	1,177
110.45	1,065	1,128	114.35	1,114	1,051
110.50	1,066	1,003	114.40	1,115	1,178
110.55	1,066	1,129	114.45	1,115	1,052
110.60	1,067	1,004	114.50	1,116	1,179
110.65	1,067	1,130	114.55	1,116	1,053
110.70	1,068	1,005	114.60	1,117	1,180
110.75	1,068	1,131	114.65	1,117	1,054
110.80	1,069	1,006	114.70	1,118	1,181
110.85	1,069	1,132	114.75	1,118	1,055
110.90	1,070	1,007	114.80	1,119	1,182
110.95	1,070	1,133	114.85	1,119	1,056
111.00	1,071	1,008	114.90	1,120	1,183
111.05	1,071	1,134	114.95	1,120	1,057
111.10	1,072	1,009	115.00	1,121	1,184
111.15	1,072	1,135	115.05	1,121	1,058
111.20	1,073	1,010	115.10	1,122	1,185
111.25	1,073	1,136	115.15	1,122	1,059
111.30	1,074	1,011	115.20	1,123	1,186
111.35	1,074	1,137	115.25	1,123	1,060
111.40	1,075	1,012	115.30	1,124	1,187
111.45	1,075	1,138	115.35	1,124	1,061
111.50	1,076	1,013	115.40	1,125	1,188
111.55	1,076	1,139	115.45	1,125	1,062
111.60	1,077	1,014	115.50	1,126	1,189
111.65	1,077	1,140	115.55	1,126	1,063
111.70	1,078	1,015	115.60	1,127	1,190
111.75	1,078	1,141	115.65	1,127	1,064
111.80	1,079	1,016	115.70	1,128	1,191
111.85	1,079	1,142	115.75	1,128	1,065

***DME channelling and pairing*—Continued**

VHF channel (MHz)	Airborne interrogating frequency (MHz)	Ground reply frequency (MHz)	VHF channel (MHz)	Airborne interrogating frequency (MHz)	Ground reply frequency (MHz)
115.80	1,129	1,192	116.90	1,140	1,203
115.85	1,129	1,066	116.95	1,140	1,077
115.90	1,130	1,193	117.00	1,141	1,204
115.95	1,130	1,067	117.05	1,141	1,078
116.00	1,131	1,194	117.10	1,142	1,205
116.05	1,131	1,068	117.15	1,142	1,079
116.10	1,132	1,195	117.20	1,143	1,206
116.15	1,132	1,069	117.25	1,143	1,080
116.20	1,133	1,196	117.30	1,144	1,207
116.25	1,133	1,070	117.35	1,144	1,081
116.30	1,134	1,197	117.40	1,145	1,208
116.35	1,134	1,071	117.45	1,145	1,082
116.40	1,135	1,198	117.50	1,146	1,209
116.45	1,135	1,072	117.55	1,146	1,083
116.50	1,136	1,199	117.60	1,147	1,210
116.55	1,136	1,073	117.65	1,147	1,084
116.60	1,137	1,200	117.70	1,148	1,211
116.65	1,137	1,074	117.75	1,148	1,085
116.70	1,138	1,201	117.80	1,149	1,212
116.75	1,138	1,075	117.85	1,149	1,086
116.80	1,139	1,202	117.90	1,140	1,213
116.85	1,139	1,076	117.95	1,150	1,087

* * * * * * *

4. Section 87.521(d) is revised to read as follows:

§ 87.521 Frequencies available.

* * * * * * *

(d) 108.0 MHz and the frequencies set forth in Subpart N of this part may be assigned to radionavigation land test stations for the testing of airborne receiving equipment. The frequencies normally assigned will be 108.0 and 108.05 MHz for VHF omnirange, 108.1 MHz for localizer, 334.7 MHz for glide slope, 978 and 979 MHz (X channel) and 1104 MHz (Y channel) for DME/TACAN, and 1030 MHz for ATC beacon. The power authorized on these frequencies normally will be 1 watt or less. The assignment of 108.0 MHz is subject to the condition that no interference shall be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

F.C.C. 73-500

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Commission Policies Concerning Service to CATV System by Common Carriers Licensed in the Domestic Public Point-to-Point Microwave Radio Service

ORDER

(Adopted May 9, 1973; Released May 14, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The Commission has under consideration special requirements in the Domestic Public Point-to-Point Microwave Radio Service concerning service to CATV systems. These requirements, which are the result of policy determinations, are in the form of limitations on the microwave authorizations and different public notice practices.

2. All common carrier microwave authorizations involving service to CATV systems are currently made subject to the following condition:

> This authorization is limited to the transmission of video and the associated audio signals (unless otherwise conditioned). Delivery to subscribers is authorized only at points designated as drop.[1]

Also, the public notices of applications for such authorizations contain information (identifying the signals to be relayed and the CATV systems to be served) in addition to that published for other applications. Any change in this information during the pendency of an application results, of course, in a major amendment which must also be placed on public notice.

3. These requirements were useful when the Commission was imposing some regulatory restraint on the importation of distant signals for CATV systems through its radio licensing authority. (See *Carter Mountain Corp.*, 32 FCC 459, 321 F.2d 359, 1963.) However, since the Commission now requires all CATV systems to file applications (which appear on public notice) and be authorized to carry all broadcast television signals, these microwave requirements appear to serve no useful purpose. Moreover, the "video only" limitation does not appear entirely consistent with our specialized common carrier decision in Docket No. 18920 (29 FCC 2d 870). Therefore, the above noted requirements will be terminated. Henceforth, there will be no special distinction in the public notice or authorization for common carrier microwave facilities involving service to CATV systems.

[1] See Public Notice, Report No. 2521, May 11, 1967.

4. However, carriers are reminded that these changes in no way affect the applicability of Section 214 of the Communications Act. Service to new points (other than those points of communication specified on the radio authorization) may require certification pursuant to the provisions of Section 214 even though no additional radio facilities are required. Also, if additional circuits are to be multiplexed on a microwave channel originally authorized only for television transmission, prior authorization must be obtained pursuant to Section 214 as applicable.[2]

5. In view of the foregoing, IT IS ORDERED that the condition on all outstanding microwave authorizations, as described in paragraph 2 above, IS DECLARED NULL AND VOID.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] Where such circuits are currently authorized on the face of the license, no further authorization under Section 214 will be required for their continued operation.

F.C.C. 73-503

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of COMMUNICATIONS SATELLITE CORP. Request for a Waiver, Under Section 319 (d) of the Communications Act of 1934, of a Construction Permit To Allow it To Proceed Immediately With the Construction of Three Satellites To Be Used for Communications Services to the Department of the Navy and to Maritime Commercial Users	Files Nos. 17-CSS-P-(3)-73, 130-CSG-P-73, 131-CSG-P-73

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 15, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONERS H. REX LEE AND WILEY CONCURRING IN THE RESULT.

1. On April 16, 1973, the Commission released a Memorandum Opinion and Order in this proceeding (FCC 73-397) granting the Communications Satellite Corporation (Comsat), pursuant to Section 319(d) of the Communications Act, a partial waiver of the requirement for a construction permit to allow it to proceed, at its own risk, with the construction of the satellites covered by its system application (File No. 17-CSS-P-(3)-73). This partial waiver was expressly conditioned on Comsat's amending its applications within 10 days from the release of the Commission's Order to comply with certain conditions set forth in that Order (p. 15).

2. Comsat failed to file the required amendment within the time specified and our previously granted waiver has therefore terminated. However, on May 4, 1973 Comsat did file an amendment to its application, accompanied by a request for reinstatement of the partial waiver.

3. We have reviewed Comsat's amendment and find that it meets the basic objectives of our Memorandum Opinion and Order, namely to offer participation in the entire system to carriers providing maritime communication service and setting forth the basis for the proposed charges to the Navy. Therefore, the amendment is hereby accepted for filing. Our action herein does not however dispose substantively of the issues which may be involved therein. That will be done after we have reviewed the amended application in light of the applications and comments of the other interested entities. Accordingly, IT IS ORDERED that, the previous partial waiver of the requirement for a construction permit to allow Comsat to proceed, at its own risk, with the construction of the satellites covered by its amended system appli-

cation is reinstated, without prejudice to the Commission's action on the merits of that application, including the proposed tariff schedule.

IT IS FURTHER ORDERED:

(a) That within 20 days after release of this Memorandum Opinion and Order, any U.S. common carrier now providing services via a public correspondence station in the Maritime Mobile Service which desires to participate in the proposed system shall file an appropriate application in accordance with the terms set forth in our previous order; and

(b) That other interested parties may file comments with respect to Comsat's amended applications within the same 20-day period; and

(c) That any interested party may file comments with the Commission with respect to applications filed by common carriers as set out in subparagraph (a) above within 30 days after release of this order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-192

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ALBERT L. CRAIN, HUMBLE, TEX.	Docket No. 19186 File No. BP-17550
ARTLITE BROADCASTING CO., HOUSTON, TEX.	Docket No. 19187 File No. BP-17577
JESTER BROADCASTING CO., NASSAU BAY, TEX.	Docket No. 19188 File No. BP-17579
SPACE CITY BROADCASTING CO., HOUSTON, TEX.	Docket No. 19189
For Construction Permits	File No. BP-17871

MEMORANDUM OPINION AND ORDER

(Adopted May 18, 1973; Released May 22, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON DISSENTING WITH STATEMENT. BOARD MEMBER PINCOCK ABSENT.

1. The above-titled applications for new standard broadcast stations were designated for hearing by Commission Order, 28 FCC 2d 381, released March 31, 1971. Thereafter, the Chief Administrative Law Judge, by Order, FCC 72M-172, released February 7, 1972, granted the applicants' joint request for approval of agreement seeking grant of the application of Artlite Broadcasting Company (Artlite) and dismissal of the remaining applications without requiring publication pursuant to Rule 1.525(b). Subsequently, in response to an appeal by the Broadcast Bureau from the Judge's dismissal of the application of Jester Broadcasting Company (Jester) without requiring publication, the Review Board, by Order, 39 FCC 2d 878, released March 7, 1973, reversed the Judge and denied the joint request for approval of agreement, which was predicated on approval without the necessity for publication. Now before the Board are petitions for reconsideration filed by three of the applicants and numerous related requests.[1]

2. In its petition for reconsideration, Jester first points out that two of the Board Members, in concurring and dissenting statements, expressed concern over the impact, if any, of the Commission's recently released Report and Order, *Standard Broadcast Station Assignment*

[1] The pleadings before the Board are as follows: (a) petition for reconsideration or other relief, filed April 6, 1973, by Jester; (b) petition for reconsideration and petititon for waiver of Section 1.106(a) of the Rules, both filed April 9, 1973, by Albert L. Crain (Crain); (c) petition for reconsideration and request for waiver of Rule 1.106(a), both filed April 6, 1973, by Space City Broadcasting Company (Space City); (d) opposition to (a)–(c), filed April 17, 1973, by the Broadcast Bureau; (e) comments on petitions for reconsideration, filed April 17, 1973, by Artlite; (f) reply, filed April 20, 1973, by Space City; (g) reply, filed April 27, 1973 by Crain; (h) motion to dismiss, filed April 25, 1973, by the Broadcast Bureau; (i) request for withdrawal or dismissal of petition for reconsideration and request for waiver of Rule 1.106(a), filed April 30, 1973, by Space City; (j) special plea for expedited action, filed May 4, 1973, by Jester; and (k) request for expedited consideration, filed May 4, 1973, by Crain.

Standards, 39 FCC 2d 645, released February 28, 1973, on the publication requirement in this proceeding. In this regard, Jester alleges that under the Commission's newly announced criteria for the filing of standard broadcast applications, neither its proposal nor any substitute application filed pursuant to publication in Nassau Bay could be accepted. In support of this allegation, Jester attaches an engineering showing to its pleading. Because of the intervention of these new rules, Jester argues, grounds for the Board's reconsideration of its interlocutory ruling are presented. In final justification for its request, Jester contends that the applicants are bound by the wording of the joint agreement to pursue it until they receive a "final order" from the Commission. Albert L. Crain (Crain) and Space City Broadcasting Company (Space City)[2] also seek reconsideration on essentially the same grounds. Both contend that to require publication would be a futile gesture since no new application could be accepted for filing, and Space City submits a supporting engineering statement. Both applicants also request the Board to waive Rule 1.106(a) in order to accept and consider their reconsideration petitions. They argue that in light of the Commission's Report and Order and the aforementioned statements of two Board Members with respect thereto, the Board should waive the rule which ordinarily bars reconsideration of interlocutory orders.[3]

3. In its comments, Artlite disagrees with Jester that it is bound to pursue reconsideration or other relief until a "final order" is obtained from the Commission. In Artlite's view, the applicants were only so bound during the existence of the joint agreements, and the Board's Order nullifies the agreement thereby releasing the parties; therefore, it does not wish reconsideration. In its opposition, the Bureau takes the position that Rule 1.106(a) specifically precludes reconsideration in this case. The Bureau initially points out that the Board has consistently refused to reconsider denials of joint settlement agreements and has only modified this stance where new or supplemental agreements were submitted. Here, the Bureau states, petitioners submit no new information but request approval of the same agreement. The Bureau argues that the Report and Order in question here does not present special circumstances which would warrant reconsideration. Commission policy under Section 311 of the Communications Act of 1934, as amended, and Rule 1.525(b), the Bureau contends, would require acceptance for filing of a new application for essentially the same facilities at Nassau Bay without regard to the conditions set forth in the Commission's Report and Order. In these circumstances, the Bureau urges denial of the reconsideration and waiver requests.

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[2] Space City also informs the Board that because of the "unique procedural posture" of the proceeding, it has filed a "protective" application for review urging Commission action should the Board deny reconsideration.

[3] In its motion to dismiss (see note 1, *supra*), the Bureau informs the Board that on April 17, 1973, Space City and Artlite filed a new joint settlement agreement with the Presiding Judge. The new agreement, the Bureau notes, does not involve the other two applicants. The Bureau argues that this new request by Space City is inconsistent with the relief sought in its reconsideration petition and that the latter should therefore be dismissed. In its request for withdrawal or dismissal of petition (see note 1, *supra*). Space City indicates that it now seeks approval of the new agreement which provides for dismissal of its application and, accordingly, requests that its petitions for reconsideration and rule waiver be withdrawn or dismissed. In light of these requests and because the arguments made by Space City will be dealt with in our treatment below of the Crain and Jester pleadings, we will dismiss Space City's petitions.

4. In their replies, Space City and Crain [4] contend that the Board's Order should be viewed as non-interlocutory because it was a final determination of whether the case should be decided in the manner stipulated by the agreement. Review of the Board's action at a later stage of the proceeding can afford no relief, it is maintained, because the objective of the agreement was to avoid hearing and terminate the proceeding. Because the issue must be resolved now, the applicants argue, the Board's Order must be considered to be final in nature. If the Board does not agree, petitioners reiterate, then it ought to waive Rule 1.106(a) on the strength of the statements of two of its Members.

5. The Board is of the view that the merits of the reconsideration requests before us should be reached. As all of the parties recognize, our customary practice, as provided for in Rule 1.106(a), is to deny reconsideration of interlocutory rulings and, as the Bureau points out, we have only reviewed the denial of joint settlement agreements where new or supplemental agreements were submitted. However, in light of the fact that the Report and Order relied on was released after the original pleadings were filed, and that the applicants seeking reconsideration rely directly on statements of two of our Members indicating the desirability of affording the parties an opportunity to file further pleadings, we believe unique circumstances are presented warranting treatment of their petitions.[5]

6. Having reviewed the substance of the arguments, the Board is of the view that reconsideration of its earlier order would be contrary to precedent, logic, and, most important, the public interest. In *Valley Broadcasting Co.*, 18 FCC 2d 564 (1969), the Commission held that an applicant filing pursuant to publication under Rule 1.525(b) was entitled to utilize the provisions of Rule 73.203(b) in effect when the dismissing application had been filed, even though a new application for the same facilities would not have been acceptable for filing at the time that publication was ordered. Accord *Christian Voice of Central Ohio*, 21 FCC 2d 369, 18 RR 2d 375 (1970). Also see *Radio Americana, Inc.*, FCC 63–1133, 1 RR 2d 722, where the Commission waived its interim criteria governing acceptance for filing of standard broadcast applications in order to permit the filing of applications pursuant to publication requirements. These holdings are, in our opinion, consistent with the basic purpose of the publication requirement, i.e. to prevent the artificial removal of a demand for broadcast facilities and to insure that the Commission will be able to fulfill its mandate under Section 307(b) of the Act.[6] To the extent that the accomplishment of this purpose through publication is inconsistent with the application of the new criteria governing the acceptance of standard broadcast applications for filing, the publication requirements must be controlling, otherwise, as stated in the *Valley* case, supra, "the paramount concern expressed in Section 307(b) of the Act and Section 1.525 of the Rules would be nullified". Finally, it

[4] Although for the reasons stated in note 3, *supra*, we need not pass upon Space City's reply pleading, we will treat the arguments presented therein since Crain supports those arguments in his own pleading.

[5] We do not, however, believe that waiver of Rule 1.106(a) is necessary in order to consider the petitions before us; such request will therefore be denied.

[6] See Report and Order, *Dismissal of Applications by Agreement*, FCC 61–1021, 20 RR 1673; and *Radio Americana, Inc., supra*.

appears to us that the application of the new processing line rules to this proceeding would result in a serious public interest detriment with absolutely no offsetting public interest benefit. Thus, one of the applications in this proceeding, none of which have been shown to be in compliance with the new processing rules, will be granted; and the only practical effect of applying those rules in this proceeding to bar the filing of a new application pursuant to publication would be to reduce the number of communities from which a 307(b) choice could be made.

7. ACCORDINGLY, IT IS ORDERED, That the petitions for reconsideration, filed April 6 and April 9, 1973, by Jester Broadcasting Company and Albert L. Crain, respectively, ARE DENIED; and

8. IT IS FURTHER ORDERED, That the petition for waiver of Section 1.106(a) of the Rules, filed April 9, 1973, by Albert L. Crain, IS DENIED; and

9. IT IS FURTHER ORDERED, That the motion to dismiss, filed April 25, 1973, by the Broadcast Bureau, and the request for withdrawal or dismissal of petition for reconsideration and request for waiver of Rule 1.106(a), filed April 30, 1973, by Space City Broadcasting Company, ARE GRANTED; and that the petition for reconsideration and request for waiver of Rule 1.106(a), filed April 6, 1973, by Space City Broadcasting Company, IS DISMISSED; and

10. IT IS FURTHER ORDERED, That the special plea for expedited action, and the request for expedited consideration, both filed May 4, 1973, by Jester Broadcasting Company and Albert L. Crain, respectively, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF BOARD MEMBER JOSEPH N. NELSON

I would approve the joint request without requiring publication on the grounds that (a) the Commission's *Report and Order* (FCC 73–220), Docket No. 18651, released February 28, 1973, *In the Matter of Amendment of Part 73 of the Commission's Rules Regarding AM Station Assignment Standards, etc.*, prohibits the acceptance of a new application similar to that of the Nassau Bay applicant, Jester Broadcasting Company, and no exceptions to this prohibition have been specified by the Commission; and (b) even if the prohibitions were waived, the objectives of said *Report and Order*, when added to the grounds for approval of said joint request set forth by the Chief Administrative Law Judge (FCC 72M–172, released February 7, 1972), warrant a finding that a grant of the instant request would not "unduly impede achievement of a fair, efficient and equitable radio service" as set forth in Section 1.525 of the Rules.

The above *Report and Order* provides that certain threshold showings be made before a new AM application can be accepted for filing. Neither the present Nassau Bay applicant nor any other post-publication applicant can submit such showings in light of the undisputed engineering factors which pertain in that situation. Thus, in the ab-

sence of a waiver [1] of the policy enunciated in said *Report and Order*, any conditioning of a grant of the joint request upon publication pursuant to Section 1.525 of the Rules would be meaningless. In such situations, both the Commission and the Board have held that publication is not required and the joint requests were granted. *Woodward Broadcasting Co.*, 5 FCC 2d 503, 8 RR 2d 919 (Rev. Bd. 1966), citing the Commission's Memorandum Opinion and Order in *Blue Island Community Broadcasting Co., Inc.*, 1 FCC 2d 629, 6 RR 2d 136 (1965). In my view, these cases are the only ones which are directly in point, and the holdings therein as to non-publication were required *before grants* could be made.[2] In the *Woodward* case, the Board stated:

> In their joint request, petitioners urge that publication, pursuant to § 1.525(b) of the Rules should not be required because a new application for facilities similar to those sought by Woodward would meet various insurmountable engineering difficulties, including the fact that such a proposal would not be accepted for filing under § 73.24 of the Rules since it could not be shown that at least 25 percent of the area to be served at night is a "white" area, and the fact that it would be impossible to use the frequency sought by Woodward to serve Wyandotte without an overlap of the 1 mv/m contour which the 0.05 mv/m contour of WJW, in violation of § 73.37 of the Rules. Where, as here, a new application for the facilities of the dismissing applicant could not be filed in compliance with the Commission's Rules, the publication requirements of § 1.525(b) of the Rules are inapplicable. See *Blue Island Community Broadcasting Co.*, 1 FCC 2d 629, 6 RR 2d 136 (1975). (Footnote omitted.)

Whatever doubts there may have been as to the sufficiency of the grounds on which the Chief Administrative Law Judge concluded that publication was not required, the addition of the above-quoted Commission objective in its *Report and Order* places the subject joint request in a position where the public interest would best be served by a grant thereof. Rather than "impede" the achievement of a fair, efficient and equitable radio service, such a grant would, under the Commission's new principles, *expedite* a determination in the public interest.

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[1] In *Radio Americana, Inc.*, 1 RR 2d 722 (1963), the Commission, in a split decision, granted a waiver of the *interim* "freeze" order pending consideration of rule-making. This is not the situation before us now where a new national policy has already been adopted.

[2] In *Valley Broadcasting Co.*, 18 FCC 2d 564, 16 RR 2d 785 (1969) (where a post-publication application was not accepted for filing), and in *Christian Voice of Ohio*, 21 FCC 2d 369, 18 RR 2d 375 (1970), the Commission held that a post-publication FM applicant could invoke the prior 25-mile rule rather than be bound by the new 10-mile rule. This interpretation was logical and necessary in order to permit the applicant to apply for the *same community* as that of the dismissing applicant in accordance with the requirements of Section 1.525. On the other hand, the objective of the rules adopted in the above *Report and Order*, was "to control the expansion of standard broadcast service in such a manner that, in the future, grants of new standard broadcast stations or changes in existing stations will be limited largely to those situations in which improvements in the existing level of aural service are already needed, and can readily be achieved by alternative means." Clearly, permitting the filing of a substitute Nassau Bay application would be inconsistent with said Commission objective.

F.C.C. 73R-174

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
GUY S. ERWAY, WEST PALM BEACH, FLA.	Docket No. 19601 File No. BPH-7137
SANDPIPER BROADCASTING CO., INC., WEST PALM BEACH, FLA.	Docket No. 19602 File No. BPH-7533
SUN SAND AND SEA, INC., WEST PALM BEACH, FLA.	Docket No. 19603 File No. BPH-7809
MARSHALL L. ROWLAND, WEST PALM BEACH, FLA.	Docket No. 19604 File No. BPH-7843
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted April 30, 1973; Released May 3, 1973)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK ABSENT.

1. Before the Review Board for consideration are: (1) a petition to enlarge issues, filed November 10, 1972, by Sandpiper Broadcasting Co., Inc. (Sandpiper),[1] directed against the application of Sun Sand and Sea, Inc. (Sun);[2] (2) a motion to enlarge issues, filed November 10, 1972, by Guy S. Erway (Erway)[3] directed against the applications of Sandpiper, Sun and Marshall W. Rowland (Rowland);[4]

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[1] Other related pleadings before the Board for consideration are: (a) opposition, filed December 22, 1972, by Sun; (b) Broadcast Bureau's comments, filed December 22, 1972; (c) reply, filed January 26, 1973, by Sandpiper; (d) supplement to opposition, filed February 20, 1973, by Sun; and (e) motion to strike or in the alternative, petition for leave to file supplemental statement, filed February 9, 1973, by Sun.

[2] Petitioner seeks the addition of the following issues against Sun:

(a) To determine the proposed location for the main studio proposed by Sun Sand and Sea, Inc. and whether its application is complete in all applicable details as required by Section 1.514 of the Commission's Rules and has been maintained up-to-date pursuant to the provisions of Section 1.65 of the Commission's Rules with particular regard to the proposed location of the main studio for the station.

(b) In the event it is determined that Sun Sand and Sea, Inc. proposes to locate its main studio at its proposed transmitter site, to determine whether good cause exists for such location outside the City of West Palm Beach, and, if so, whether the main studio location would be consistent with the operation of the station in the public interest.

(c) To determine whether Sun Sand and Sea, Inc. has made provision for the lease or construction of a main studio, and, in connection therewith, the cost of such main studio.

(d) To determine whether Sun Sand and Sea, Inc. has sufficient guarantees of the bank loan proposed in that application, and, whether that bank loan is in fact available.

(e) To determine which of two alternate financial plans proposed by Sun Sand and Sea, Inc. is in fact the plan relied upon by the applicant.

(f) To determine in light of issues (c), (d) and (e) above, whether Sun Sand and Sea, Inc. is financially qualified to construct and operate the proposed station for one year.

(g) To determine whether Sun Sand and Sea, Inc. has omitted significant information of the business interests of Thomas S. Waldron, Secretary, Director and 25% stockholder of the applicant.

[3] Other related pleadings before the Board for consideration are: (a) opposition, filed December 22, 1972, by Rowland; (b) opposition, filed December 22, 1972, by Sandpiper; (c) opposition, filed December 22, 1972, by Sun; (d) Broadcast Bureau comments, filed December 22, 1972; (e) reply, filed January 26, 1973, by Erway; and (f) supplement to opposition, filed February 20, 1973, by Sun.

[4] Petitioner seeks the addition of site availability and misrepresentation issues against Sun; legal qualifications, financial qualifications and a modified site availability and/or suitability issues against Sandpiper; and a modified site availability and/or suitability and financial qualifications issues against Rowland.

(3) a petition for leave to file supplement to opposition to (abovementioned) petitions to enlarge issues, filed February 20, 1973, by Sun;[5] and (4) an interlocutory appeal of [Administrative Law Judge's] adverse decision,[6] filed February 21, 1973, by Sun.[7] Sun's January 8, 1973, amendment would, if accepted, affect consideration of the merits of the two petitions to enlarge issues also before us. Consequently, the Board will initially consider the appeal from the Presiding Judge's Order, and then proceed to an examination of the petitions to enlarge issues and other related requests before us.

2. As an initial matter, we do not agree with the Presiding Judge's interpretation of Section 1.522(b) of the Commission's Rules insofar as it applies to the proposed change in transmitter site contained in Sun's amendment. Because Sun is attempting to amend the engineering portion of its FM broadcast application, the usual good cause considerations—rather than the additional criteria employed by the Judge[8]—are controlling. Consequently, the Presiding Judge's discussion of whether or not Sun could reasonably have foreseen the site availability problem is not an appropriate consideration. Although, as the Judge recognized, it appears that Sun could have ascertained the fact that a new transmitter site was required earlier, this factor is not necessarily determinative in circumstances, such as here, where an applicant has satisfied the other constituent elements of good cause.[9] Thus, the amendment was not compelled by the applicant's voluntary act; it was filed with due diligence after the petition requesting a site availability issue was filed; it would not occasion the addition of parties or issues;[10] the other parties to the proceeding would not be prejudiced; and there is no indication that Sun would gain any comparative advantage whatsoever. In this latter connection, the Board notes that the engineering amendment would simplify the hearing, inasmuch as

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[5] Other related pleadings before the Board for consideration are: (a) opposition, filed March 14, 1973, by Sandpiper; (b) opposition, filed March 14, 1973, by Erway; and (c) Broadcast Bureau comments, filed March 13, 1973.

[6] Other related pleadings before the Board for consideration are: (a) opposition, filed March 14, 1973, by Sandpiper; (b) opposition, filed March 14, 1973, by Erway; and (c) Broadcast Bureau comments, filed March 14, 1973. Additionally, by Memorandum Opinion and Order, FCC 73M–228, released February 20, 1973, the Judge certified to the Board a petition for leave to file supplement for leave to amend, filed February 15, 1973, by Sun.

[7] Sun appeals from the Presiding Judge's denial of its petition for leave to amend, filed January 8, 1973, in which petitioner sought to specify a new transmitter site, remove Thomas S. Waldron as a 25% stockholder, and substitute a new financial proposal. The Judge denied the first two aspects of the amendment and held that the financial aspect of the amendment would be denied without prejudice to resubmission if Sun's new financing were to remain available despite the provisions of his Order (FCC 73M–126, released January 30, 1973).

[8] Section 1.522(b) provides in pertinent part:

In the case of requests to amend the engineering proposal in *standard broadcast applications* . . . good cause will be considered to have been shown only if, *in addition to the usual good cause considerations*, it is demonstrated that (1) the amendment is necessitated by events which the applicant could not reasonably have foreseen . . .; (2) the amendment could not reasonably have been made prior to designation for hearing; and (3) the amendment does not require an enlargement of issues or the addition of new parties to the proceeding. (Emphasis added.)

[9] See *Click Broadcasting Co.*, 25 FCC 2d 511, 20 RR 2d 150 (1970).

[10] Any question concerning Sun's candor with respect to the specification of its transmitter site, if shown, would be in issue regardless of whether the engineering amendment were to be granted. It should also be noted that in the designation Order, FCC 72–879, released October 13, 1972, the Commission found that, in view of the facts that co-channel spacing requirements place limitations on the choice of transmitter sites, and that Sun, Sandpiper and Rowland all would provide satisfactory general coverage of West Palm Beach, a waiver of Section 73.315(a) of the Commission's Rules would be appropriate in each case. Because Sun's new antenna site would continue to comply with the spacing requirements and, at the same time, reduce the area for which a Section 73.315(a) waiver is needed, no further inquiry in this regard is required.

it would obviate the request for a basic qualifications issue inquiring into the availability of Sun's transmitter site. Finally, the Presiding Judge's remaining major objection to granting the engineering amendment has been met by a supplement to Sun's amendment, reflecting that the applicant has obtained FAA clearance for its newly proposed site.[11]

3. The Presiding Judge's refusal to accept that portion of Sun's amendment relating to the replacement of a 25% stockholder must also be overturned. Although, as Sun tacitly admits, the replacement was a voluntary act on the part of the corporation, it nevertheless appears to have been the result of a legitimate business judgment which Sun considered necessary in order to resolve its financial and antenna site difficulties.[12] Once having become apprised of these difficulties, Sun proceeded with reasonable diligence in submitting the amendment in response to requests for basic qualifications issues. As noted by the Judge, Sun's modified financial proposal (which is also contained in the amendment) is contingent upon the substitution of Ryan for Waldron; thus, acceptance of this aspect of the amendment would obviate the requests for financial qualifications issues against Sun. Further, acceptance of this substitution would not prejudice any party to the proceeding since it would not serve to enhance Sun's comparative position.

4. One other matter merits discussion. The objectors indicate that the replacement of Waldron should not be permitted because of the pendency of a request for a misrepresentation issue against Sun, concerning its representations about the availability of its formerly-proposed site. As will be discussed, *infra*, we do not agree that a misrepresentation issue is warranted. Even if it were, however, specification of the issue would not be an impediment to acceptance of the amendment. Erway, the proponent of the issue, does not allege that Waldron was responsible for or contributed to the alleged misrepresentation in any fashion, whatsoever; rather, it is the applicant itself against which the issue is requested. Thus, given the circumstances here, the retention of Waldron would not be essential to resolution of the misrepresentation issue. See *Rockland Broadcasting Co.*, FCC 63R–179, 25 RR 319 (1963).[13] As previously indicated, the Judge dismissed that portion of the amendment containing Sun's revised financial proposal without prejudice to resubmission. In view of our determination that the entire amendment should be accepted, resubmission is no longer necessary, and Sun's appeal will therefore be granted.

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[11] In his Order, FCC 73M–126, the Judge indicated that Sun's failure to obtain FAA clearance for its transmitter site was of equal importance in his decision to deny this amendment. However, on February 15, 1973, Sun petitioned for leave to file supplement to petition for leave to amend in order to show that it had obtained the necessary clearance. By Memorandum Opinion and Order, FCC 73M–228, released February 20, 1973, the Judge certified this petition to the Review Board for consideration in conjunction with the pending appeal.

[12] Contrary to the assertions of Sandpiper and Erway, there is no adequate basis for questioning Sun's disclosure of the circumstances surrounding Waldron's replacement with Francis T. Ryan. Compare *Cleveland Broadcast Telecasting Corp.*, FCC 64R–315, 3 RR 2d 533 (1964). Erway merely speculates that the corporation may not have been empowered to remove a director and stockholder; and Sandpiper's hearsay-based allegation that Waldron does not believe that his association with Sun was a contingent one is not relevant to determining whether or not the instant appeal should or should not be granted.

[13] The precedent relied upon by the other parties, without exception concerns situations in which the withdrawing principal had been directly involved in misrepresentations to the Commission, or was an essential witness for purposes of resolving the issue in hearing, and/or other good cause deficiencies had been involved. See *Lebanon Valley Radio*, 2 FCC 2d 287, 6 RR 2d 767 (1966); *Grayson Television Co.*, 11 FCC 2d 881; 12 RR 2d 512 (1968); *Martin Lake Broadcasting Co.*, 26 FCC 2d 963, 20 RR 2d 964 (1970).

5. Next, Sun's request for leave to file a supplemental opposition to the two petitions to enlarge issues before us will be denied. In a recent Public Notice,[14] the Board stated that the justification for filing supplemental pleadings, and the extent to which such pleadings comply with the Commission's Rules will be closely scrutinized, and that the Rules will be strictly construed when such pleadings are submitted to the Review Board. In our view, Sun has not demonstrated good cause for submitting additional information about the circumstances surrounding its original attempts to secure an antenna site. On the contrary, petitioner's alleged justification indicates that it should have been put on notice of the uncertainty concerning the availability of the site since two of its principals held conversations with the lessor of the originally-proposed site in February of 1972. Yet, Sun does not explain why there was a hiatus of a year before its principals again approached the prospective lessor; nor does Sun explain why it failed to elicit this alleged newly-gleaned information in order to respond in a timely fashion to the site availability and misrepresentation issues now requested against it. We believe, therefore, that the information contained in Sun's supplement could have been obtained earlier and have been included in its opposition. To allow the supplement to serve the purpose of an opposition renders the provisions in the Rules intended to provide a fair opportunity for another party to respond by reply (and to avoid a proliferation of unauthorized pleadings) effectively meaningless.[15] Orderliness, expedition and fairness in the adjudicatory process require that reasonable procedural limits be established and maintained.

6. Sandpiper's petition to enlarge issues, which contains a number of requests for issues against Sun, will be denied in its entirety. Sandpiper's requests for issues to determine the proposed location of Sun's studio, Sun's alleged failure to disclose this information in its application, and, contingently, Sun's alleged violation of Section 73.210 of the Commission's Rules,[16] are based upon an inattentive reading of Sun's application. Both in its original application and in the January 8, 1973, amendment, Sun indicated that its studio would be located in West Palm Beach. Thus, although the precise site has not yet been determined, Sun had indicated that its studio-site location will conform with Commission requirements. This stated intention is sufficient assurance that the studio will be located within the station's designated community, rather than at its transmitter site, as alleged. See *Voice of Middlebury*, 3 FCC 2d 512, 7 RR 2d 347 (1966). Sandpiper's requests for various financial qualifications issues will also be denied. Thus, Sun's January 8, 1973, financial amendment shows that the applicant has sufficient guarantee of a bank loan in the amount of $100,000.00 from the First American Bank of North Palm Beach, which has been secured by the personal endorsement of Sun's stockholders; that the applicant is relying upon the equipment lease arrangement with Gates Radio Company; and that the applicant has a surplus of funds over

[14] Public Notice No. 90836, released October 11, 1972, entitled *Filing of Supplemental Pleadings Before the Review Board.*

[15] See Sections 1.45 and 1.294 of the Commission's Rules.

[16] Section 73.210 of the Commission's Rules requires that the main studio of a commercial FM broadcast station either be located in the city of license or that good cause be shown for locating the studio outside the community.

and above its $3,000.00 estimate for the lease and/or construction costs of a main studio which is sufficient to meet any reasonably foreseeable contingencies. Finally, although Sun did not explain the precise nature of two business enterprises upon listing the former principal Waldron's business interests in Table II of its application, these omissions are not of a serious or significant enough nature to warrant the addition of a Section 1.514 issue.[17] The other matters raised by Sandpiper in its reply will not be considered by the Board; because Sandpiper's reply pleading does not comport with Section 1.45(b) of the Rules, inasmuch as it is not limited to the matters raised in Sun's opposition, Sun's motion to strike will be granted in this regard.

7. In its motion to enlarge issues, Erway requests issues against the other three applicants in the proceeding. As indicated previously, Erway's request for a site availability issue against Sun has been mooted by Sun's January 8, 1973, amendment which specifies a new transmitter site. Erway's request for an issue inquiring into whether or not Sun deliberately misrepresented the availability of its formerly-proposed site to the Commission will also be denied. Contrary to Erway's suggestion, a misrepresentation issue cannot be predicated on the fact that Sun did not, in fact, have reasonable assurance of its proposed site, or, for that matter, that Sun should have been put on notice that there was some uncertainty about securing the site when its principals commenced preliminary negotiations with the lessor of the proposed site in early 1972. This uncertainty and/or confusion about securing the site is reflected in the affidavits submitted by several of Sun's principals who were involved in the initial conversations with the lessor. However, the affidavits also reflect that each of the affiants had some basis for assuming that the site would be available to them; for example, the principals not only had conversations with the prospective lessor about the site, but also physically inspected the land in question in the presence of the lessor. Given these circumstances, the Board is of the view that there is insufficient basis for specifying an issue inquiring into whether or not Sun made deliberate misrepresentations to the Commission.

8. Erway's remaining requests for issues will also be denied. Petitioner seeks similar sets of issues against both Sandpiper and Rowland with respect to the availability for intended use and/or suitability of their proposed antenna sites, as well as issues inquiring into the cost estimates for the proposed antenna systems. However, none of these requests is supported by specific factual allegations or by affidavits of a person or persons having personal knowledge of the matters in question, as required by Section 1.229(c) of the Commission's Rules. Erway also questions the availability of a loan to Sandpiper from its Vice President, John G. Keljikan, because the applicant has not indicated the terms or conditions of the loan. This omission has been cured by Sandpiper's opposition pleading; in an attached affidavit Keljikan states that the loan does not have to be repaid until such time as the corporation is generating sufficient income to commence repayment, that he is willing to wait two or three years for repayment to begin, and

[17] Similarly, the alleged ambiguity of Sun's July 11, 1972, amendment reflecting changes in Waldron's business interests does not warrant the addition of a separate issue.

that the basis or terms of repayment is a determination which will be made by the officers and directors of the applicant corporation. Finally, Erway charges that Sandpiper is not a properly constituted corporation and that, as a consequence, any corporate act taken in connection with its application is invalid. The request for a legal qualifications issue is based upon the incorrect assumption that Sandpiper lacks the requisite number of directors. Although Sandpiper showed only three directors in its initial application, its pre-designation amendment, dated June 29, 1971, containing its Articles of Incorporation, not only states that the corporation shall have four directors, but names the four men who hold those directorships.

9. ACCORDINGLY, IT IS ORDERED, That the Interlocutory Appeal of [Administrative Law Judge's] Dicision, filed February 21, 1973, by Sun Sand and Sea, Inc., IS GRANTED; that the Presiding Judge's Memorandum Opinion and Order, FCC 73M–126, released January 30, 1973, IS SET ASIDE; that the petition for leave to amend, filed January 8, 1973, and the petition for leave to file supplement to petition for leave to amend, filed February 15, 1973, by Sun Sand and Sea, Inc., ARE GRANTED; and that the amendment, filed January 8, 1973, and supplement thereto, filed February 15, 1973, by Sun Sand and Sea, Inc., ARE ACCEPTED; and

10. IT IS FURTHER ORDERED, That the petition to enlarge issues, filed November 10, 1972, by Sandpiper Broadcasting Co., Inc., IS DENIED; and

11. IT IS FURTHER ORDERED, That the motion to strike or in the alternative, petition for leave to file supplemental statement, filed February 9, 1973, by Sun Sand and Sea, Inc., IS GRANTED to the extent indicated above, and IS DENIED in all other respects; and

12. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed November 10, 1972, by Guy S. Erway, IS DENIED; and

13. IT IS FURTHER ORDERED, That the petition for leave to file supplement to opposition to petitions to enlarge issues, filed February 20, 1973, by Sun Sand and Sea, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-520

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (WILMINGTON, ILL.; MANY, LA.; MOYOCK, N.C.; LAKE PROVIDENCE, LA.; NEWTON, MISS.; BAY SPRINGS, MISS.; YORK, ALA.; REHOBOTH BEACH, DEL.; CANTON, TEX.; BRANDON, MISS.; SOUTHPORT, N.C.; HARRISON, MICH.; GREENFIELD, MO.; BELHAVEN, N.C.; RUSTON, LA.; AND BETHANY BEACH, DEL.)	Docket No. 19690 RM-2003, RM-2027, RM-2046, RM-2051, RM-2054, RM-2057, RM-2058, RM-2059, RM-2062, RM-2068, RM-2085, RM-2097, RM-2098, RM-2100, RM-2144, RM-2160

FIRST REPORT AND ORDER

(Adopted May 16, 1973; Released May 21, 1973)

BY THE COMMISSION:

1. The Commission has under consideration its Notice of Proposed Rule Making adopted February 14, 1973, FCC 73-179 (38 Fed. Reg. 5263), inviting comments on a number of changes in the FM Table of Assignments (Section 73.202(b) of the rules). All proposals were unopposed except for Many, Louisiana (RM-2027), and Rehoboth Beach, Delaware (RM-2059), to which counterproposals were filed (Ruston, Louisiana (RM-2144), and Bethany Beach, Delaware (RM-2160), respectively). Except as noted, the population figures were taken from the 1970 U.S. Census. The following decision disposes of all subject petitions except Many, Louisiana (RM-2027) for which we are issuing a Further Notice of Proposed Rule Making this date, including the conflicting petitions for assignment of FM channels to Ruston and Shreveport, Louisiana. (RM-2144, RM-2002.) The communities, channel assignments proposed, and petitioning parties are as follows:

RM-2003 Channel 288A to Wilmington, Illinois (Audio Tronix)[1]

RM-2046 Channel 221A to Moyock, North Carolina (The Stoneland Corporation)

RM-2051 Channel 224A to Lake Providence, Louisiana (B. L. Enochs)

RM-2054 Channel 292A to Newton, Mississippi (Radio Station WBKN)

RM-2057 Channel 228A to Bay Springs, Mississippi (Radio Station WHII)[1]

RM-2058 Channel 257A to York, Alabama (Radio Station WYLS)

RM–2059 Channel 224A to Rehoboth Beach, Delaware (Leisure Time Broadcasting)
RM–2062 Channel 244A to Canton, Texas (Delwin W. Morton)
RM–2068 Channel 249A to Brandon, Mississippi (Radio Station WRKN)[1]
RM–2085 Channel 296A to Southport, North Carolina (Harold H. Thoms)
RM–2097 Channel 221A to Harrison, Michigan (David A. Carmine)[1]
RM–2098 Channel 228A to Greenfield, Missouri (John A. Watkins)
RM–2100 Channel 221A to Belhaven, North Carolina (W. Axon Smith)
RM–2160 Channel 240A to Bethany Beach, Delaware (J. Parker Connor)

2. In the above cases interested parties seek the assignment of a first Class A channel in a community without requiring any changes in the present assignments. With the exception of Wilmington, Illinois; Brandon, Mississippi; Bay Springs, Mississippi; and Harrison, Michigan,[2] which require the transmitters to be located short distances from the communities, each assignment can be made in conformity with the Commission's minimum mileage separation rule (See footnote 1.)

3. We have given careful consideration to all comments, supporting statements, and other pleadings, and find it in the public interest to assign the proposed FM channels to the above-listed communities. In the Notice of Proposed Rule Making in this proceeding, we set out the economic and other information pertaining to the need for a first FM assignment in each of the communities. We shall, therefore, not repeat it in this document, except for Rehoboth Beach and Bethany Beach, Delaware, as a result of the counterproposal filed by J. Parker Connor of Bethany Beach, Delaware. A brief discussion of the Rehoboth and Bethany petitions follows.

4. *RM–2059, Rehoboth Beach, Delaware.* On September 14, 1972, Leisure Time Broadcasting (petitioner), filed a petition requesting the assignment of either Channel 224A or 240A to Rehoboth Beach, Delaware. Either channel could be assigned to that community without affecting the present FM assignments and in full compliance with the Commission's minimum mileage separation rule. Rehoboth Beach is a resort city (1,614 winter population—45,000 [3] summer population) and is located in Sussex County (80,356 population). It has no local broadcast transmission service.

5. In support of its request petitioner states that significant industry located in eastern Sussex County includes Anderson-Stokes, Inc., Selbyville Manufacturing Company, Doxee Clam Company, Draper Foods, Inc., and National Cash Register. It notes that building permits for the year 1971 for Rehoboth Beach totalled over $11,000,000. Petitioner states that the assignment of a Class A channel to Rehoboth

[1] In order to meet the minimum spacing requirements of our rules, a site 7.5 miles southwest of Wilmington, Ill., would be required; a site 1 mile southwest of Bay Springs, Miss., would be required; a site 5 miles southeast of Brandon, Miss., would be required; and a site 3 miles southwest of Harrison, Mich., would be required.
[2] Canadian concurrence has been obtained for the assignment of Channel 221A to Harrison, Michigan.
[3] Rehoboth Beach Police Department (estimate).

Beach would provide the community with its first and only commercial broadcasting facility, and if assigned it would promptly file an application for it.

6. *RM–2160, Bethany Beach, Delaware.* On March 13, 1973, J. Parker Connor (Connor) filed timely comments and a counterproposal in this proceeding in which he proposes the assignment of Channel 237A, 240A or 269A to Bethany Beach, Delaware. Bethany Beach is located some 12 miles south of Rehoboth Beach, Delaware. Connor states that Channels 237A and 240A comply with the mileage separations but Channel 269A is 1.2 miles short. However, he adds, this shortage can be overcome by locating the transmitter site southwest of the city. He notes that Bethany Beach is a resort community located on the Atlantic coastline in Sussex County, Delaware, with 189 permanent residents. He states, however, that this figure is not indicative of the true population during most of the year because during the summer months the estimated population varies from 3,849 [4] to 4,000.[5] Petitioner states the proposed assignment would give Bethany its first full-time facility with an emphasis on the town and the surrounding area. He asserts the year-round use of the area is growing constantly, with new residences, town-houses and condominum apartments being constructed.

7. Connor notes that the proposal by Leisure Time Broadcasting for Channel 224A to Rehoboth Beach would not be affected by his proposal for Channel 237, 240A or 269A to Bethany Beach, assuming Channel 224A is assigned to Rehoboth Beach. He further states that the assignment of Channel 240A to Rehoboth Beach would preclude the assignment of either Channel 237A or 240A to Bethany Beach, and this is the reason for his proposing the third option, Channel 269A. Connor adds that Channel 224A should be assigned to Rehoboth Beach in keeping with the request of Leisure Time Broadcasting and that either Channel 237A or 240A be assigned to Bethany Beach. Connor adds that he will apply for the channel, if assigned, and, if authorized, will promptly build a station.

8. We believe that the public interest would be served by assigning FM channels to Rehoboth Beach and Bethany Beach, Delaware, since these communities presently do not have aural broadcast facilities. The assignment of Channel 224A to Rehoboth Beach and Channel 240A to Bethany Beach would provide for a first local broadcast station to each community and aural services to the surrounding areas as well as to other communities.

9. Authority for the adoption of the amendments contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

10. In view of the foregoing, IT IS ORDERED, That effective

[4] Delaware State Planning Office, February 1968.
[5] Town Manager, Bethany Beach, Delaware.

June 28, 1973, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED to read as follows:

City	*Channel No.*
Alabama: York	257A
Delaware:	
Bethany Beach	240A
Rehoboth Beach	224A
Illinois: Wilmington	288A
Louisiana: Lake Providence	224A
Michigan: Harrison	221A
Mississippi:	
Bay Springs	228A
Brandon	249A
Newton	292A
Missouri: Greenfield	228A
North Carolina:	
Belhaven	221A
Moyock	221A
Southport	296A
Texas: Canton	244A

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-162

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GILROY BROADCASTING CO., INC., FORT COLLINS, COLO. BEEF EMPIRE BROADCASTING CO., FORT COLLINS, COLO. For Construction Permits	Docket No. 19681 File No. BPH-7434 Docket No. 19682 File No. BPH-7496

ORDER

(Adopted April 17, 1973; Released April 18, 1973)

BY THE REVIEW BOARD:

1. The Review Board having under consideration the request filed on April 6, 1973, by Beef Empire Broadcasting Co., for an extension of time to and including April 17, 1973, within which to file a reply to the opposition to motion to enlarge issues, filed by Gilroy Broadcasting Company, Inc. on March 29, 1973;

2. IT APPEARING, That the time factors involved warrant action on this petition prior to the expiration of time for filing responsive pleadings (Section 1.298 of the Rules);

3. IT IS ORDERED, That the request for extension of time IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-532

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES, INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	Docket No. 19660 RM-690

APPEARANCES

Richard C. Hostetler, on behalf of The Western Union Telegraph Co., *Howard A. White*, on behalf of ITT World Communications Inc., *Ernest Brod*, on behalf of Western Union International, Inc., *Carl J. Cangelosi* on behalf of RCA Global Communications, Inc., *Charles A. Miller*, on behalf of TRT Telecommunications Corp.

MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1973; Released May 21, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. On December 18, 1972, by Notice of Inquiry and Proposed Rule Making herein, 38 F.C.C. 2d 543 (Docket No. 19660), we instituted a general inquiry to consider a number of related matters involving the relationship between The Western Union Telegraph Co., (WU) and the several international record carriers (IRC's). Among those matters were tariff revisions (free direct access) filed by the IRC's under which they would absorb the charges associated with the use of various domestic communications networks, rather than the WU message telegraph network, for the filing and delivery within the continental United States of international message telegrams. These tariff revisions, scheduled to become effective on June 1, 1973, were filed by ITT World Communications Inc. (ITT),[1] Western Union International, Inc. (WUI),[2] RCA Global Communications, (RCAG),[3] and TRT Telecommunications Corp. (TRT),[4] Under the proposed revisions, hinterland [5] customers would be able to file outbound interna-

[1] Specifically, Tariff F.C.C. No. 7, 374th Revised Page 1, 153rd Revised Page 1A, 13th Revised Page 9, 13th Revised Page 10, 15th Revised Page 11D, 9th Revised Page 70A, and 8th Revised Page 70B.

[2] Specifically, Tariff F.C.C. No. 12, 85th Revised Page 1, 8th Revised Page 9, 8th Revised Page 81, and 8th Revised Page 86.

[3] Specifically, Tariff F.C.C. No. 60, 304th Revised Page 1, 12th Revised Page 6, 10th Revised Page 65, and 10th Revised Page 66B.

[4] Specifically, Tariff F.C.C. No. 60, 161st Revised Page 1, 35th Revised Page 9, 25th Revised Page 9A, and 2nd Revised Page 9B.

[5] The "hinterland" is that area within the continental United States which lies outside the cities authorized as gateways for a particular IRC.

tional telegraph messages directly with IRC's by telephone,[6] collect TWX, collect WU telex (through the TCS system), and DATA-PHONE [7] and, if the customer uses the numbers designated by a carrier, the usage charge would be paid by the IRC's.[8] For inbound messages, the IRC's would, if the hinterland addressee has previously filed instructions with them [9] or with WU, or if the overseas sender includes in the address a paid service indicator, intercept and forward them to the addressee by means of a designated network [10] and will absorb the usage charges therefor. Under currently effective IRC tariffs, a hinterland user not wishing to employ the regular WU facilities for the domestic haul of his international messages may make use of the media described above; [11] however, he must pay the appropriate usage charges for reaching the offices of an IRC in addition to the regular tolls applicable to international telegraph message service.

2. On September 5, 1972 WU, alleging substantial adverse consequences both for itself and for the public if the proposed tariffs were permitted to become effective, filed petitions to reject or suspend the free direct access tariff revisions. In these petitions WU raised several arguments against the proposals.[12] At the time we instituted the inquiry herein, we considered those contentions and, with one exception, found them to be without merit, 38 F.C.C. 2d at 549. As to WU's remaining contention that the free direct access proposals constitute an attempt by the IRC's to expand their existing gateways without the authorization required under Section 222 of the Communications Act before tariff revisions implementing them can become effective, we indicated that WU had raised a valid threshold question which required separate consideration. We therefore deferred ruling on the tariff revisions and ordered briefing and oral argument on this question, 38 F.C.C. 2d at 549–50. Pursuant to this order, the parties, on January 17, 1973, filed briefs in support of their respective positions and, on February 1, 1973, filed reply briefs. On February 13, 1973 we heard oral argument before the Commission *en banc* on the applicability of section 222 to these tariffs.

3. Section 222,[13] was enacted by Congress to permit the merger of The Postal Telegraph-Cable Co. and WU. In connection with the merger legislation, Congress included provisions which relate to the scope of operations permitted to the merged carrier (WU) and to the IRC's respectively. The issue to be disposed of in this proceeding arises

[6] For this purpose, the IRC's propose to obtain from the American Telephone and Telegraph Co. inbound Wide Area Telephone Service (WATS) numbers for customers to use in filing international messages. ITT further proposes to accept at its New York office collect telephone calls originating within the New York City metropolitan area.

[7] The tariffs of ITT and WUI provide only for accepting at their New York office collect calls originating within the New York City metropolitan area. RCAG's tariff does not provide for tse use of DATA–PHONE. TRT's tariff provides for use of DATA–PHONE but does not permit calls at its Miami, Florida office.

[8] TRT's tariff also provides that messages may be filed by use of facsimile.

[9] Under the ITT, RCAG and TRT proposed revisions, these instructions are in conjunction with a code address filed with the Central Bureau of Registered Addresses, while WUI's tariff provides only for instructions filed directly with it.

[10] The RCAG tariff only provides for forwarding of messages intercepted at its New York gateway.

[11] *See* All America Cables & Radio, Inc., 15 F.C.C. 293 (Docket No. 9433, 1950) and the discussion at paragraph 7, *infra*. *See also* The Western Union Telegraph Co. (TWX Acquisition Case), 24 F.C.C. 2d 664 (Docket No. 18519, 1970) and The Western Union Telegraph Co., 29 F.C.C. 2d 422 (Docket No. 19036, 1971).

[12] WU first filed a petition directed to the revisions filed by ITT which was incorporated by reference and made applicable to the other revisions as they were subsequently filed.

[13] 47 U.S.C. § 222 (1970).

from the interpretation to be given to the proviso contained in section 222(a)(5) which carves out an exception to a general ban on domestic operations by IRC's. The specific language in question reads as follows:

> *Provided*, That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States, under regulations prescribed by the Commission, and the incidental transmission of the same over its own or leased lines or circuits within the continental United States.

The fundamental question which must be answered is thus whether free direct access constitutes an expansion of the existing gateways. If it is so construed, we believe that section 222(a)(5) requires Commission authorization before tariff revisions offering the service may be filed, and that requests for such authorization should be filed for consideration in the overall inquiry herein.

4. The IRC's argue that the section was intended to and should be construed as requiring prior authorization only in those instances where they seek to establish offices for the acceptance and delivery of message traffic outside their gateways and not to instances of the type involved herein where a domestic communications medium is used to transmit the message between the hinterland customer's premises and the IRC's existing offices in the present gateways. They further argue that the present proposals, since they do not involve the acquisition of facilities or offices outside currently authorized gateways, do not constitute expansion of existing gateway operations. They characterize their proposals as a reduction in the cost of direct access through removal of the "penalty" which hinterland customers presently pay to domestic carriers for direct service in addition to international telegraph message charges made for such messages. In support of their position, the IRC's rely on *All America Cables & Radio, Inc.*, 15 F.C.C. 293 (Docket No. 9433, 1950), in which we first authorized direct access at customer expense. The IRC's note that we did not find that direct access involved IRC operations outside the gateways (and consequently did not require prior authority to offer such direct access), but that we viewed acceptance and delivery of messages as occurring at a carrier's gateway office even though the domestic transmission was over public communications networks such as telephone, TWX, or mail. According to the IRC's the fact that now the carriers would pay the usage charges formerly borne by the customer should not change this approach.

5. WU, on the other hand, argues that payment by the IRC's, rather than the customer, materially alters the practice approved in *All America Cables & Radio, Inc., supra*. WU contends that free direct access will abolish any practical distinction between gateway and hinterland so far as international message traffic is concerned. The use of the denominated communications networks for domestic pickup and delivery, it believes, would make them agents for the carriers and, therefore, amounts to an incorporation of these facilities as "appendages" to the IRC's existing international systems. WU further argues that payment by the IRC's of the domestic charges will cause the point at which acceptance and delivery occurs to shift from the gateway to the customer's location in the hinterland. Since the IRC's

would be able to reach all parts of the hinterland by these networks, it would be unnecessary for them to open new offices or establish dedicated lines. It urges that Section 222, by requiring Commission authorization before the IRC's can operate in an area, was intended to place a restriction on the scope of the IRC's operations and, therefore, the determination of the applicability of the statute turns on the effect rather than the form of a service proposal.

6. At oral argument, while reiterating its view that free direct access constitutes an expansion of gateways, WU relied heavily on an economic argument derived in part from Section 222(e)(1). That section provides for a Commission-approved or prescribed formula for dividing the charges for international telegraph messages between WU and the IRC's. WU argued that the proposed tariff revisions represent a unilateral and unlawful attempt by the IRC's to divert an estimated $6 million in revenues from WU to the IRC's and, thus, to circumvent the division of tolls prescribed under 222(e)(1) which applies when international telegraph messages are filed with or delivered by WU over its public message facilities. It argues that under the proposed free direct access, although its own facilites would, for the most part, be used and in much the same manner as they are now used, the IRC's would pay WU only the regular tariffed charges applicable to the telex and TWX networks, which are substantially lower than the currently prescribed division of 6.5 cents per word [14] under the more usual method of handling international messages. These proposals, it believed, would leave WU handling only the messages which require physical handling and which, therefore, are the most costly. WU claims that it is already suffering a $10 million deficit on the domestic handling of international messages and will be severely injured by the projected additional loss of $6 million in revenues. The IRC's argued that the economic arguments of Western Union, even if valid, are not appropriate to a narrow question of statutory construction and should be disregarded. The only question involved, they say, is whether or not the proposals are properly viewed as expansions of present gateway operations.

7. Under section 222 the handling of international telegraph messages within the continental United States is a "domestic telegraph operation," [15] and the section does not contemplate IRC participation in such operations beyond that provided for by the proviso contained in section 222(a)(5). That proviso permits the IRC's to accept or deliver international telegrams within the cities approved by the Commission as gateways for such carriers. Whether prior authority under section 222 is required therefore depends upon whether implementation of the free direct access proposals will result in operations by the IRC's outside their present gateways. By our decision in *All America Cables & Radio, Inc., supra*, we allowed to become effective tariff revisions which provided for direct access at customer expense. Our decision was based on the requirement in section 201 that common carriers must provide communications services whenever there has been

[14] This division is applicable to full-rate messages. There are corresponding charges for other classes of service.

a "reasonable request" therefor.[16] Our holding was limited to a finding that an otherwise reasonable request for service was not rendered unreasonable because customers filed outbound international messages with, or received inbound messages from, an IRC by such means as telephone, TWX, or mail. The decision rested on our view that a customer is free to choose the means by which he avails himself of the services of an IRC. Underlying this rationale is the view that when the customer pays for the use of one of the denominated media, the medium so chosen becomes his agent. Therefore, when an IRC accepts or delivers an international message in accordance with the customer's choice, acceptance or delivery occurs at the IRC's office in the gateway. Since all relevant operations by the IRC's occur within their authorized gateways, direct access at customer expense raised no section 222 issue. Other cases involving direct access at customer expenses did not go beyond the scope of that case.[17]

8. After carefully considering the arguments of the various parties and the applicable authority, we have concluded that by proposing to absorb the costs of direct access, the IRC's have materially departed from existing practice. Therefore, the rationale which underlay our decision in *All America* does not apply. Under the proposed tariffs, the communications media to be used for direct access will become the agents of the IRC's rather than of the customer. Consequently, acceptance and delivery of international messages will no longer occur at the IRC's gateway offices, but will shift to the point in the hinterland where the customer is located. This will certainly alter the structure of the industry by altering the relationships between the domestic and international carriers as to the handling of international traffic. In large measure, it will render the statutory differentiation between gateway and hinterland meaningless so far as international telegraph messages are concerned. The IRC's could avoid the WU message service and establish direct connections with virtually any point in the continental United States. They will be able to do in this way what they could otherwise do only by establishing hinterland offices and facilities. Indeed, under free direct access, the IRC's will achieve even greater coverage than they could by establishing new offices outside present gateways. Had the IRC's proposed to open such offices, there would be little question that they would need Commission authorization. Since the IRC's would need authorization to directly expand their gateways, it makes little sense to allow them to achieve the same result without Commission authorization simply because they chose to accomplish their aims by filing tariff revisions. Any other interpretation would undermine the Congressional determination that WU should principally engage in domestic operations and the IRC's should principally engage in international operations. From the language of section 222(a)(5), it is clear that Congress did not intend to restrict the IRC's for all time to their present gateways, but it is equally clear that it was left to the Commission to determine the extent of their operations on the mainland. To accomplish its intent, Congress gave the Commission in this section the duty to approve gateways and

[15] *See* 47 U.S.C. §§ 222(a) (5) and (6) (1970).
[16] 47 U.S.C. § 201(a) (1970).
[17] See f.n. 11, *supra*.

the power to regulate the IRC's gateway operations. Implicit in this power is a requirement for the Commission to determine the effect on the public interest of any proposals which would fundamentally alter the nature of current gateway concepts and a concomitant duty to assess the public need for additional gateways. We are, therefore, unable to accept the IRC's suggestion that section 222 should be given a narrow construction that applies it only to physical intrusions into the hinterland. The vast technological and operational changes expanding the scope and availability of communications facilities and services in the United States, and their potential use for international communications, compared to the environment existing in 1943, re-inforce our view that the section must be applied as we have determined herein.

9. It has been suggested that economic impact on WU is irrelevant to the legal issue herein, and in view of the narrow procedural context in which the issue has been raised, that may be true. However, the free direct access proposal, discussed above, necessarily raises considerations which are clearly within the purview of section 222, to the extent that it alters carrier relationships and responsibilities in handling international telegraph traffic. Thus, within this context, the economic consequences of the proposals are relevant to a determination of its consistency with the public interest purposes and objectives of section 222. It was also suggested that section 222(a)(5) is inappropriate as a vehicle for assessing the free direct access proposals since that section, unlike sections 214 and 308, which deal with prior approval of carrier applications, does not specify any standards or procedures to be applied in evaluating requests for gateway authorizations. The IRC's would have us construe the language of section 222 as no more than a statement that they could continue to operate after the merger in the same manner as they were then operating. As noted above, we do not feel that Congress intended so narrow a construction. We view section 222(a)(5) as a particularized application of the general regulatory requirements embodied in section 214. Thus, when a proposal raises a gateway question, section 222(a)(5) directs the Commission to consider its impact on the public interest and brings into play the procedural framework outlined in section 214. Since gateway expansions by definition involve an extention of service into an area not previously directly served, this latter section comes into play and provides statutorily-authorized procedures which are implicitly incorporated into section 222(a)(5).

10. Since we view the free direct access proposals as an attempt to expand the existing gateways, we feel the tariff revisions must be rejected for lack of appropriate statutory authority. By taking this course of action, we do not indicate any position as to the merits of the underlying proposals. We merely hold that the decision whether or not to institute free direct access should be made only after a consideration of all the issues involved. The appropriate context for this determination is an application under section 222(a)(5) for authorization to file tariff revisions offering the service. The carriers are, of course, free to recast their free direct access proposals in this form and submit them for our consideration. We note here that one of the matters included in the inquiry in Docket No. 19660 is a series of applications for the authorization of additional gateway cities. It

seems to us that, since the issues to be considered in both of these matters are similar, and intimately related to the overall subject of the inquiry, it is appropriate that any applications filed should be incorporated into the inquiry.

11. One matter remains for consideration. On February 16, 1973, TRT filed petitions against ITT, WUI and RCAG which cite violations of the antitrust laws as the basis for urging suspension of their free direct access tariff revisions pending investigations of the alleged violations. TRT alleges that the three named carriers who currently operate the Central Bureau of Registered Addresses,[18] by refusing to permit TRT access to that register are engaged in a "concerted refusal to deal" which is a "per se violation of section one of the Sherman Act." [19] By our decision to reject the IRC's free direct access tariffs, including that of TRT itself, the relief requested in TRT's petitions has been rendered moot. For this reason, we hold that the petitions must be dismissed. At the same time, we recognize that we have an important duty to consider the effect of the antitrust laws in our regulatory functions and, therefore, we will, on our own motion, order that the issues raised in these petitions be included in the inquiry in Docket No. 19660.

Accordingly, IT IS ORDERED, That, the above-referenced tariff revisions of ITT World Communications Inc., Western Union International, Inc., RCA Global Communications, Inc. and TRT Telecommunications Corp. are REJECTED for lack of statutory authority under section 222(a)(5).

IT IS FURTHER ORDERED, That, except to the extent granted herein, the petitions of The Western Union Telegraph Co. to reject or suspend the above-referenced tariff revisions are DENIED;

IT IS FURTHER ORDERED, That in the event the carriers file applications for authority under section 222 to institute free direct access, the applications shall be incorporated into, and be considered in conjunction with, the inquiry ordered in Docket No. 19660;

IT IS FURTHER ORDERED, That the petitions filed by TRT Telecommunications Corp. to suspend the above-referenced tariff revisions of ITT World Communications Inc., Western Union International, Inc. and RCA Global Communications, Inc. are hereby DISMISSED as they have been mooted by the action taken herein; and

IT IS FURTHER ORDERED, That the Notice of Inquiry and Proposed Rulemaking in Docket No. 19660 is hereby amended to include consideration of the following issue:

Whether the carriers participating in the Central Bureau of Registered Addresses, by refusing the request of TRT Telecommunications Corp. to participate therein, have engaged in any practices which are:

a. anti-competitive in nature; or

[18] The Central Bureau is a joint effort of ITT, RCA, WUI and French Cable in which the member carriers maintain a joint list of customer telegraph code addresses. The purposes of the code is to eliminate the need, and the per word charges, for reproduction in every international message of the addressee's name and actual street address.

[19] TRT, Petitions to Suspend, at p. 14.

b. contrary to the public interest standards of the Communications Act;
and, if so, whether the public convenience and necessity would be served by granting the petition of TRT Telecommunications Corp. to participate in the Central Bureau of Registered Addresses.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-483

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
KACY, INC., (KACY), PORT HUENEME, CALIF., Has: 1520 kHz, 1 kW, 50 kW-LS, DA-2, U; Requests: 1520 kHz, 5 kW, 50 kW-LS, DA-2, U
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 15, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The Commission has before it for consideration the above application for a nighttime power increase for station KACY, Port Hueneme, California, and a request by the applicant for a waiver of the Commission's previous "freeze" on standard broadcast (AM) applications.[1] On February 21, 1973, the "freeze" was terminated and revised rules were adopted (effective April 10, 1973) to govern the acceptance of applications for new standard broadcast stations and major changes (including power increases) in existing stations.[2] Since the KACY application was filed after imposition of the AM "freeze", it will be considered under the revised rules.[3]

2. The proposed KACY nighttime power increase from 1 to 5 kW does not comply with the provisions of section 73.37(e)(3)(ii) or (iii) because (i) all of the city of Port Hueneme, California, is included within the existing 1 kW nighttime limitation service contour of KACY, and (ii) all of the proposed KACY gain area presently receives primary service from other standard broadcast stations.[4]

3. The applicant contends that unique circumstances justify a waiver and grant of the application. It is stated that at the time a daytime power increase from 10 kW to 50 kW was authorized, the Commission took cognizance of special factors presented by the applicant as prevailing in Ventura County, including the considerations that: (i) the geographical development of Ventura County communities and their peculiar contiguity requires KACY to operate with 50 kilowatts of power to provide adequate service; (ii) large portions of the county consist of rugged mountainous terrain, the existence

[1] *Interim Criteria to Govern the Acceptance of Standard Broadcast Applications*, 13 FCC 2d 866, 13 RR 2d 1667, note 2 to section 1.571 of the Commission's rules.
[2] Report and Order adopted February 21, 1973, FCC 73-220, 26 RR 2d 1189.
[3] Note 4, section 73.37.
[4] The note to section 1.571 provides that no application for broadcast facilities in the conterminous United States tendered for filing after July 18, 1968, will be accepted for filing unless it complies fully with the provisions of section 73.24(b) and the provisions of section 73.37 (a) through (e).

of a complex network of highways through which constitutes a vital link to residents and KACY serves as an important radio link, and that (iii) actual experience demonstrated that 10 kilowatts did not provide a satisfactory signal throughout the county, principally because of the rugged terrain. Applicant also states that a nighttime power increase to 5 kilowatts for KACY would provide the area with a more uniformly consistent signal, enabling a larger number of daytime listeners to receive an adequate signal during nighttime hours; that the proposed operation would permit KACY to serve an additional 58,363 persons during nighttime hours; and that the increased power would not result in interference to any existing station and would comport with the goals of the Commission's allocation policies.

4. With regard to the applicant's comments regarding the KACY daytime power increase, we would note that that application was filed in 1965 and our Notice of Proposed Rule Making looking toward changes in our rules to govern the acceptance of standard broadcast applications was not adopted until September 4, 1969.[5] Moreover, the present nighttime power increase request was filed more than three years after we adopted our Notice of Proposed Rule Making in this matter.

5. Having considered the applicant's contentions, we find that the proposed power increase is inconsistent with our allocation goals. In our Notice of Proposed Rule Making and Memorandum Opinion and Order adopted September 4, 1969 (see footnote 5, *supra*), as well as our Report and Order in this matter adopted on February 21, 1973, it was made quite clear that power increases would be authorized only if it could be demonstrated that the applicant's existing operation would not provide adequate service to its city of license or that a first aural service would be provided to a substantial area or population. In addition, under section 307(b) of the Communications Act, the Commission's mandate to provide for a "fair, efficient and equitable distribution of radio service" includes the consideration of operating *power*. The proper distribution and utilization of power is, of course, as important to efficient allocation as is the consideration of frequencies. Inefficient utilization of power depletes available spectrum space as certainly as improper utilization of frequencies. The applicant's contentions that increased power for KACY is necessary in order to provide the residents of Ventura County with adequate service must be rejected. Our study indicates that essentially all of the increased area that would be served by KACY presently receives service from at least four AM stations and four FM stations. In addition, several other AM and FM stations provide service to different portions of the proposed gain area. In view of the multiple services already provided, we cannot conclude that a power increase, which would merely add an additional service, is in the public interest. As previously noted, the present nighttime operation of KACY provides service to all of its city of license (Port Hueneme) in accordance with the requirements of the Commission's rules. Insofar as service to Ventura County is concerned, even if KACY were authorized the maximum power permitted in the

[5] *In the Matter of AM Station Assignment Standards*, FCC 69–960, 17 RR 2d 1524.

broadcast band (50 kilowatts), its nighttime service contour (9.8 mV/m according to applicant) would still cover less than 15 percent of the county's land area.

6. In view of the foregoing, we find that the applicant has failed to present sufficient reasons, if true, to justify waivers of the rules which would permit acceptance of its application. Therefore, a hearing on the requests for waiver is not required. *United States* v. *Storer Broadcasting Company*, 351 U.S. 192 (1956).

7. Accordingly, IT IS ORDERED, That the applicant's requests for waiver of the aforementioned rules ARE DENIED and that the application IS RETURNED as not acceptable for filing.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-515

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of a Request by: LAFOURCHE COMMUNICATIONS, INC., LAFOURCHE PARISH, LA. For Modification of Memorandum Opinion and Order	CSR-299 (LA052)

MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1973; Released May 22, 1973)

BY THE COMMISSION:

1. On January 31, 1973, the Commission adopted its Memorandum Opinion and Order in *Lafourche Communications, Inc.*, FCC 73-122, 39 FCC 2d 472, authorizing Lafourche's cable television operations existing in Wards 1, 2, 3, and 5 of Lafourche Parish, Louisiana. On March 8, 1973, Lafourche filed a "Request for Modification of Decision" to include Ward 7 within the limits of our January 31 order. This request is unopposed.

2. In our original order we determined that the public interest justified authorization of Lafourche's cable operations existing in Lafourche Parish, prior to March 31, 1972. Further, we determined that our authorization would be on a "per-Ward" basis in conformity with that granted by the local authorities. Therefore, we granted authorization for each Ward in which Lafourche indicated that it had existing operations: Wards 1, 2, 3, and 5. Lafourche now states that at all times it had intended that its Ward 7 operations be included, but that through confusion and error, this fact had not been communicated to the Commission.

3. Cable operations began in Ward 7 on January 3, 1972, and Lafourche's request for authorization there involves the same issues which we originally considered with respect to the other four Wards. Clearly, had the information been provided, our original order would also have included the Ward 7 operations. We see no reason now to deny the authorization which would have been granted but for Lafourche's inadvertent omission.

In view of the foregoing, the Commission finds that a grant of the subject request for modification would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Request for Modification of Decision," filed March 8, 1972, IS GRANTED to the extent that this Memorandum Opinion and Order modifies our earlier Memorandum Opinion and Order in this matter.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-486

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of: NORTH AMERICAN COMMUNICATION CORP., DEVIL'S LAKE, N. DAK. For Construction Permit for New Television Translator Station	File No. BPTTV-4634

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 15, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT. COMMISSIONERS JOHNSON AND WILEY CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above-captioned application of North American Communication Corp., licensee of television station KXJB-TV, channel 4, Valley City, North Dakota (CBS), requesting a construction permit for a new 5-watt VHF television broadcast translator station to serve Devil's Lake, North Dakota, by rebroadcasting the programs of station KXJB-TV on output channel 10. The Commission also has before it for consideration a petition to deny, filed November 20, 1972, by Spokane Television, Inc., licensee of television station KTHI-TV, channel 11, Fargo, North Dakota (ABC), and various pleadings filed in connection therewith.[1] Devil's Lake is approximately five miles beyond station KXJB-TV's predicted Grade B contour and is within the city of license of station WDAZ-TV, channel 8, which is primarily a satellite of station WDAY-TV, channel 6, Fargo, North Dakota (NBC). The community is not within the predicted service contour of any television station other than station WDAZ-TV. The application is, therefore, inconsistent with the provisions of section 74.732(e) of the Commission's rules, which prohibits a licensee-owned VHF translator station beyond its primary station's predicted Grade B contour and within the predicted Grade B contour of another television station assigned to a different community. The applicant has requested a waiver of the rule.

2. Petitioner claims standing in this proceeding as a "party in interest" within the meaning of section 309(d) of the Communications Act of 1934, as amended, on the grounds that the proposed translator would rebroadcast the signals of station KXJB-TV outside the primary station's predicted Grade B contour and would have an adverse com-

[1] The Commission also has before it for consideration the comments of WDAY, Inc., licensee of station WDAZ-TV, filed November 30, 1972; Opposition to the petition to deny, filed December 4, 1972, by North American, together with a request for waiver of section 74.732(e) of the rules; Supplement to Opposition to petition to deny, filed February 5, 1973, by North American; and Reply to Oppositions, filed March 14, 1973, by Spokane Television, Inc.

petitive impact on petitioner's station KTHI–TV which competes with KXJB–TV for audience and advertising revenues in and around the Fargo-Grand Forks-Valley City, North Dakota, television market. Devil's Lake, as we have noted, is outside the predicted Grade B contours of both station KXJB–TV and KTHI–TV. Although petitioner's claim to standing is based on questionable grounds, it is clear that it would compete in Devil's Lake with the applicant and we find, therefore, that it has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008.

3. KTHI–TV points out the applicant's violation of section 74.732 (e) of the rules and further alleges that operation on output channel 10 as proposed would cause interference to reception by the public of KTHI–TV's signals on adjacent channel 11 as well as to reception at the headend of K & K Cable TV Corp., operator of a cable television system in Devil's Lake. WDAZ–TV did not file objections to grant of the application, but it addressed comments to the question of whether it is a "total satellite." WDAZ–TV states that, although it is primarily a satellite of station WDAY–TV and will remain so, it does originate some local programming, but its "local" programming does not originate in Devil's Lake. The cable system has filed nothing in this proceeding. KTHI–TV's signals were, at one time, carried in Devil's Lake by a translator station (KØ5EL) authorized to the Devil's Lake Sioux Tribal Education Committee, whose license was cancelled August 1, 1972. There is an application (BPTTV–4608) pending for reinstatement of the authorization. Petitioner claims that operation of the proposed KXJB–TV translator on output channel 10 would cause interference to reception by the Sioux Tribe's translator of its channel 11 input signal from station KTHI–TV. The applicant contends that what it seeks with its proposed translator is competitive parity with KTHI–TV in Devil's Lake and the only difference between what it seeks and what KTHI–TV has is that the proposed KXJB–TV translator would be licensee-owned and the translator carrying KTHI–TV would be community-owned.[2]

4. In an effort to avert this controversy, the applicant, on December 4, 1972, amended its application to specify operation on output channel 2 instead of output channel 10, but its attention was called to the fact that there was an application (BPET–420) pending for a construction permit for a new noncommercial educational television station to operate on channel 2 in Grand Forks, North Dakota. Since Devil's Lake is about 40 miles from the tower of the proposed new television station and inside its predicted Grade A contour, it seemed apparent that the translator would cause interference. KXJB–TV, therefore, asked for dismissal of its amendment to channel 2, reverting the proposal to one for channel 10. In its request for a waiver of section 74.732(e) of the rules, the applicant states that Devil's Lake is presently served by only one off-the-air television service, that of WDAZ–TV, and that the only other television service is that provided

[2] The term "licensee-owned" is generally used to indicate a translator licensed to the licensee of the television station whose programs are rebroadcast (primary station) and the term "community-owned" designates a translator authorized to anyone other than the licensee of the primary station.

by the cable system which supplies the programs of stations KXJB–TV, KTHI–TV and WDAZ–TV, among others. Whether directly from KTHI–TV or by means of the Sioux Tribe's translator, the programs of two networks (KTHI–TV is ABC; WDAZ–TV is NBC) are or will be available off-the-air in Devil's Lake; the KXJB–TV proposal represents the third off-the-air network signal, CBS. The Devil's Lake cable system, according to the pleadings, serves something less than 1,700 subscribers, but Devil's Lake is a community with a population of about 7,000 persons. It is apparent, therefore, that a third network service (and a third off-the-air television service) would be brought to a substantial number of persons who are not presently subscribers to the cable system. Bearing in mind that Devil's Lake is just about five miles outside KXJB–TV's predicted Grade B contour, we think that a waiver of the rule is justified.

5. We deal now with the question of interference by the proposed translator to reception by the public of the signals of station KTHI–TV, to reception by the Devil's Lake cable television system of the signals of station KTHI–TV at its headend, and to reception of the channel 11 input signal from KTHI–TV by the Sioux Tribe's translator. The applicant states that no other output channel could be used without there being a greater danger of interference than now exists, an assertion supported by the failure of its efforts to change to channel 2. The proposed translator is to operate with transmitter output power of five watts from a site approximately 85 miles from KTHI–TV and nearly due south of Devil's Lake with a high gain antenna oriented at two degrees true. The translator would radiate only one watt in the direction of KTHI–TV and would provide effective radiated visual power of 110 watts towards Devil's Lake. That the signal of KTHI–TV in Devil's Lake is not a strong one is demonstrated by the applicant's measurement of KTHI–TV's signal strength of 48 dbu and the fact that there is apparently a demand for the Sioux Tribe's translator to provide satisfactory reception. We do not believe that there will be significant interference to reception of KTHI–TV's signals in Devil's Lake, but assuming that there would be interference, the Sioux Tribe's translator can be expected to furnish adequate signals in Devil's Lake so that satisfactory reception of KTHI–TV's programs will be assured. Thus, if a viewer finds that he is unable to receive the programs of KTHI–TV on channel 11 on his receiver because of the operation of the channel 10 translator, he need only tune his receiver to channel 5 to receive those programs.

6. With respect to the claim of KTHI–TV that operation of the translator would cause interference to reception of the KTHI–TV signals at the headend of the Devil's Lake cable television system, the applicant points out that the cable system headend is about four miles east of Devil's Lake and the translator site is about nine miles south of Devil's Lake. The translator signal strength at the cable system headend would be about 10 dbu lower than the strength of KTHI–TV's signals at that point and because it is adjacent channel interference with which we are concerned, objectionable interference to the cable system's reception is unlikely. Similarly, with respect to petitioner's claim that the translator would interfere with the Sioux Tribe translator's input signal, we think that the possibility is remote

because the effective radiated power from the proposed KXJB–TV translator (operating with a directionalized high gain antenna) would be less than one watt in the direction of the Sioux Tribe's translator.[3]

7. Having considered the application and the pleadings filed in connection therewith, we are of the opinion that section 74.732(e) of the rules should be waived and that the application should be granted. We find that petitioner has raised no substantial or material questions of fact. We further find that the applicant is qualified to construct, own and operate the proposed translator and that a grant of the application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That section 74.732(e) of the Commission's rules IS WAIVED.

IT IS FURTHER ORDERED, That the petition to deny filed herein by Spokane Television, Inc., IS DENIED, and the above-captioned application of North American Communication Corporation IS GRANTED in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[3] Were it otherwise, the KXJB–TV application and the Sioux Tribal Education Committee's application would be mutually exclusive and a hearing would be necessary.

F.C.C. 73-415

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFIC NATIONAL BANK OF SEATTLE, TRUSTEE For Transfer of Control of Mesabi Western Corp., Licensee of Station KIDO, Boise, Idaho, to Pacific National Bank of Washington, Trustee	File No. BTC-6671

AIRMAIL

APRIL 18, 1973.

MR. JOHN F. HARRIGAN, *President,*
Pacific National Bank of Washington,
Seattle Main Banking Center,
Post Office Box 160
Seattle, Washington 98111.

DEAR MR. HARRIGAN: This is with reference to the application for consent to transfer of control of Mesabi Western Corporation, licensee of KIDO, Boise, Idaho, from The Pacific National Bank of Seattle, Trustee, to The Pacific National Bank of Washington, Trustee (File No. BTC-6671).

In its review of the above application, the Commission considered the fact that Mr. T. Norman Calvert, a British subject and resident alien in the United States, serves as a Vice-President of The Pacific National Bank of Washington. However, in view of the fact that he is only one of more than fifty vice-presidents and that as loan officer for your Tacoma Region he has no function whatsoever in connection with the trust in point, the Commission found, in accordance with Section 310(a)(5) of the Communications Act, that his presence as an officer of the bank would not disserve the public interest.

The Commission also considered whether the association of Messrs. William E. Boeing, Jr., Anthony I. Eyring and James G. McCurdy, as directors of the bank which holds 90% of the stock of the licensee of KIDO in trust, would impair competition between KETO-FM, Seattle, which is controlled by Mr. Boeing, and KIRO-AM-FM, Seattle, of which Messrs. Eyring and McCurdy are directors. Based on the successor trustee bank's showing that, in actuality, the association of these individuals with regard to the operation of KIDO is so slight as to be non-existent, the Commission found that any implication of impairment of competition between the Seattle stations as a result of this association was negated.

In view of the above, the application was granted.

Commissioner Johnson dissenting. Commissioners H. Rex Lee and Robert E. Lee absent.

BY DIRECTION OF THE COMMISSION.
BEN F. WAPLE, *Secretary.*

F.C.C. 73-513

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 61 OF THE COMMISSION'S RULES RELATING TO NOTICE REQUIREMENTS FOR SCHEDULES FOR NEW OR REVISED CLASSIFICATIONS OF SERVICE	Docket No. 19741

NOTICE OF PROPOSED RULE MAKING

(Adopted May 16, 1973; Released May 21, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. Notice is hereby given of proposed rule making in the above-captioned matter.

2. The purpose of the proposed rule making is to provide notice requirements for tariffs offering new or revised classes or sub-classes of service.[1] The objectives of the proposed rules were set forth in our Notice of Proposed Rule Making adopted on January 6, 1971 (27 F.C.C. 2d 36) the forerunner of the foot-noted case below.

3. While the aforementioned rule making proceedings dealing with the subject matter hereof contemplated the imposition of conditions prior to Commission authorization, it is proposed herein that carriers who offer new classes or sub-classes of communications service over duly authorized facilities shall give 60-days notice at the time of filing any new or revised tariff schedule offering to provide new or revised classes or sub-classes of service. For the purpose of this proposed rule making such services may be defined as "any interstate or foreign common carrier communication service that a carrier cannot render to any customer at any location in the absence of the effectuation of such new or revised tariff schedule."

4. This rule would permit affected parties to submit comments and/or pleadings, within 25 days of such filing for consideration and evaluation of public interest questions by the Commission before a new class or sub-class of service is commenced. The proponent of the change will generally furnish the supporting data specified in Section 61.38 of the Commission's Rules adopted on October 30, 1970, in Docket No. 18703 (25 F.C.C. 2d 957). At the expiration of the 60-day Notice period such revisions will become effective automatically unless rejected or suspended by the Commission.

5. We believe that the proposed rule making will facilitate more efficient implementation of the Communications Act and will be con-

[1] See Report and Order adopted January 31, 1973 in Docket No. 19117, 39 F.C.C. 2d 131, and paragraph 19 of our Memorandum Opinion and Order adopted March 21, 1973 in Docket No. 18703 (FCC 73-327).

ducive to the public interest. It will also achieve equality of status and consideration of all carriers (international, general, specialized and miscellaneous domestic), the alleviation of disparate positions between existing and potential new entrants in the specialized communications field in the event that the Commission should determine that the new classification or sub-classification of service would serve the public interest.

6. Since Sections 61.60 through 61.63, in providing for 1 day's notice are at variance with the objectives of this amendment in not providing sufficient time for consideration and evaluation of such proposed changes, it is further proposed to delete and repeal these sections, thereby rendering the services described therein subject to the regular notice requirements of the rules.

7. The proposed rule changes are set forth in the Appendix hereto.

8. Authority for the proposed rule making instituted herein is contained in Sections 2, 3, 4(i) and (j), 201(b), 203, 214, 301, 303, 307–309 and 403 of the Communications Act.

9. Interested parties may file comments on the proposed rules and issues discussed herein on or before June 28, 1973 and reply comments on or before July 10, 1973. In reaching its decision in this matter, the Commission may take into account any other relevant information before it in addition to the comments invited by the notice.

10. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 14 copies of all statements, briefs, comments or other pleadings shall be furnished to the Commission. Responses filed in this proceeding will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street, N.W.).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Section 61.58 is revised as to words italicized as follows:

§ 61.58 Notice requirements.

Every tariff publication which constitutes a rate increase *or a new or revised classification or sub-classification of communications service* shall bear an effective date, and, except as otherwise provided by regulation, special permission, or order of the Commission, shall give not less than 60 days notice to the public and to the Commission. Notice shall be given by filing with the Commission such proposed tariff publications. In addition to this notice, if the tariff publication proposes to increase any charge or to effectuate an authorized discontinuance, reduction or other impairment of service to any customer, the filing carrier shall take such steps as are appropriate under the circumstances to inform the affected customers of the content of the tariff publication. Every tariff publication which does not constitute a rate increase *or a new or revised classification or sub-classification of communications service* shall bear an effective date and, except as otherwise provided by regulation, special permission, or order of the Commission, shall give not less than 30 days notice to the public and to the Commission

regardless of whether or not changes are affected thereby. Any period of notice required herein shall begin on, and shall include the date the tariff is received by the Commission, but shall not include the effective date. In computing the notice required, Sundays and holidays shall be counted.

Sections 61.60 through 61.64 are hereby deleted and repealed.

F.C.C. 73-506

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition of
RADIO PARA LA RAZA
For Revocation of License of Station
KSLV, Monte Vista, Colo.

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 14, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. Now under consideration are: a petition seeking revocation of the license of Station KSLV, Monte Vista, Colorado, filed May 3, 1972. by Radio Para La Raza (RPLR), which will be considered as an informal request for Commission action pursuant to Section 1.41 of our Rules;[1] an opposition filed December 11, 1972, by the licensee, George O. Cory; and a reply filed February 20, 1973, by RPLR. RPLR identifies itself as a community organization concerned with radio broadcasting in the San Luis Valley of Colorado, in which Monte Vista is located. Included in its membership are representatives of many Chicano organizations and other groups representing, according to RPLR, every significant minority organization in the San Luis Valley.

BACKGROUND

2. The following information will aid in understanding the present proceeding. Station KSLV operates on 1240 kHz with 250 watts nighttime power and 1,000 watts during the daylight hours. The primary service area of the daytime operation, defined by the 2 mv/m contour, is roughly circular with radii extending approximately 14 miles from the antenna. This contour covers approximately the eastern half of Rio Grande County, in which Monte Vista is located, and the western fourth of Alamosa County. According to the 1970 Census, Monte Vista has a population of 3,909, and the populations of Rio Grande County and Alamosa County are 10,494 and 11,422, respectively. The Census Bureau categorizes 39.8 percent of Rio Grande County and 33.7 percent of Alamosa County populations as "Spanish Language or Spanish Surname." A comparable percentage for Monte

[1] RPLR requests that its pleadings be considered as a formal complaint pursuant to Sections 1.711 and 1.721 of our Rules. However, those sections apply to common carriers, not broadcast stations. As will be more fully set out below, Section 312 of the Communications Act, which gives us discretion to institute revocation proceedings, creates no rights for third parties. Thus, no procedures have been adopted to provide for formal revocation petitions filed by third parties. Requests for revocation of license have been treated as informal requests for Commission action under Section 1.41 of the Rules, *Leflore Broadcasting Company, Inc.*, 36 FCC 2d 161, 24 RR 2d 953 (1972).

Vista itself cannot be computed from published figures. At the time the petition was filed. KSLV employed five full-time and two part-time employees. The last pleading filed by KSLV indicates that the station is now staffed by four full-time and three part-time employees.

3. On January 7, 1971, the renewal application (BR–2948) for Station KSLV was filed. The application was processed in due course and the licensee was sent a staff letter, dated March 5, 1971, pointing out certain deficiencies in the application. An amendment to the application to correct the deficiencies was requested. In addition, the letter noted a discrepancy between the amount of public affairs and miscellaneous programming proposed in its 1968 renewal application and the actual performance as indicated in the composite week during the 1968–1971 license period. It also appeared that certain programs had been misclassified in the station's logs. The letter stated: "We are not now requiring additional information concerning the above matters. However, we expect that you will comply with your proposals in the future and will take the steps necessary to classify programs in accordance with our definitions." The application was amended on March 19, 1971, and a partial explanation of the problems noted in the language quoted above was submitted in the amendment. The renewal application was granted March 31, 1971.

4. On January 20, 1972, RPLR presented a list of 19 programming demands to the manager of Station KSLV, Mr. George Watts.[2] The demands were not successfully negotiated. On May 3, 1972, more than 13 months after the renewal application was granted, RPLR filed its petition to revoke.

1971 RENEWAL APPLICATION

5. A substantial portion of RPLR's petition is devoted to the promise-versus-performance problem in the 1968–71 license period and the misclassification problem for which KSLV was admonished in the staff's letter of March 5, 1971. RPLR also alleged that the showing submitted by the licensee of the ascertainment of the problems and needs of Monte Vista was inadequate. For example, RPLR alleges that: KSLV failed to consult with community leaders, as distinguished from civic and business leaders; KSLV failed to adequately ascertain problems in areas outside the city of license; the 19 Chicanos consulted were "establishment" members who do not reflect the Chicano community; the consultations failed to elicit meaningful responses from those interviewed; and KSLV did not correlate the station's pro-

[2] RPLR demanded: that KSLV broadcast eight hours of Spanish-language programming per day, three hours of which must be in the morning and evening prime-time periods; that the station broadcast a weekly 60-minute Spanish talk show; that a five-minute Spanish-language newscast must be broadcast in connection with each hour of such programming; that other special programs must be broadcast as to Chicano history, culture and religion; that the station prepare public service announcements on behalf of Chicano organizations; that the station aid in developing a broadcasting education program at Adams State College; that the station recruit Chicanos for announcers, technicians and management-level jobs; that the station produce and broadcast Spanish-language programs for Chicano children; that the station investigate any allegations of discrimination made against those advertising on the station; that the station refuse to carry any advertisements that discriminate or convey discriminatory stereotypes; that the station subscribe to a Mexican news service; that the station pay for newspaper advertisements to set out any agreement reached between RPLR and the station; and that the station announce prior to Spanish-language broadcasts, "Spanish language programming is being brought to you on KSLV as a result of a programming agreement between KSLV and Radio Para La Raza."

posed programming to the problems and needs discovered during the ascertainment process. RPLR also criticizes the programming broadcast during the 1968–1971 renewal period, and the programming proposed in the 1971 renewal application for the present license term.[3] The main thrust of RPLR's allegations as to the programming during the present license term is that KSLV does not broadcast Spanish music or cultural programming.

6. Section 1.108 of our Rules permits us to set aside the grant of a renewal application, on our own motion, within thirty days of its grant. The time limit as to other parties is clearly set out in Section 405 of the Communications Act, which provides in part: "A petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of." In our view, RPLR's petition seeks a review of our action in granting the 1971 renewal application insofar as it pertains to KSLV's performance during the 1968–1971 license term, the material contained in its 1971 renewal application, and its programming proposals for the 1971–1974 license term. We believe that such matters are beyond review at this time in light of the Congressional policy set out in Section 405 of the Act. This would be true even assuming the validity of all of RPLR's allegations, although we believe that some of those allegations are unfounded or without merit. The courts have noted a strong policy in favor of administrative finality, and have held that proceedings that have become final will not be reopened unless there has been fraud on the agency's or the court's processes, or unless the result is manifestly unconscionable. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238, 64 S. Ct. 997 (1944), *Greater Boston Television Corporation* v. *FCC*, 463 F. 2d 268 (D.C. Cir. 1971), *KIRO, Inc.* v. *FCC*, 438 F. 2d 141 (D.C. Cir. 1970). RPLR has not alleged, nor do we believe that it could allege, that the grant of KSLV's 1971 renewal application was obtained by fraud, or that the grant of that application was manifestly unconscionable.

7. We do not say that the matters alleged by RPLR as to the 1971 renewal application are matters which we do not consider. Rather, we say that there are procedures for bringing such matters to our attention while the application is pending before us. RPLR did not avail itself of those procedures. In this regard, we note that as of March 31, 1973, there were 8,326 broadcast stations on the air. Approximately one-third of these (2,775) come up for renewal every year. The processing of these applications is a considerable task. Moreover, in light of our own decisions and decisions of the courts, there has been a healthy increase in the participation of viewers and listeners in the renewal process. The result of such participation, with the concomitant disposition of petitions and objections, is to stretch our resources even further. RPLR would further add to our workload

[3] KSLV proposed in its 1971 renewal application to broadcast 110 hours per week, of which 15.09 per cent would be news, 1.77 per cent public affairs, and 3.12 per cent "other" programming, exclusive of entertainment and sports. Approximately 40 per cent of the licensee's news programming would be devoted to local news. KSLV proposed to broadcast religious programs, agricultural programs, a "bulletin board" program, a "birthday book" program, hospital reports, a "trading post" program, sports programming, including live broadcasts of high school athletic events, a local discussion program dealing with local events and news, road reports, seasonal features, and items of special to women interspersed during the morning programming.

by having us review final determinations on renewal applications at any time during the license term. Such a proposal is not administratively feasible since we do not have the resources to permit such a process.

PERFORMANCE SINCE THE GRANT OF THE RENEWAL APPLICATION

8. Section 312(a)(2) of the Communications Act provides that we may revoke a license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application." While that section does not, in our view, permit reconsideration of matters presented to us in the 1971 renewal application, including proposed programming, it does permit us to look at matters not presented to us at that time or at events following the grant of the application. In this regard, RPLR alleges: that the General Manager of KSLV called RPLR's 19 demands "demeaning and self-serving" and refused to accede to the demands; that KSLV broadcast an editorial "demeaning" the Chicano heritage, and which encouraged "Americanization" of area citizens; that a comment was made during one program referring to "Mr. Frito Bandito"; and that the station does not broadcast public affairs programming that it proposed in the 1971 renewal application or present public service announcements.

9. KSLV represented in its 1971 renewal application that it would devote 1.77 percent of a typical broadcast week to public affairs programming, and 3.12 percent to "other" programming, exclusive of entertainment and sports.[4] KSLV alleges that during the week of November 6 through 12, 1972, its public affairs programming constituted 6.39 percent of the broadcast week while "other" programming constituted 4.43 percent. In support of its allegations, KSLV has submitted a list of public affairs programs broadcast during the week. A brief description of the program and its duration is given. Comparable figures for the week of September 5 through 11, 1972, were 1.98 [5] percent and 6.65 percent. Included in that programming is an "open mike" program of one hour's duration broadcast at 1:00 p.m. on Mondays. In this program various people from the San Luis Valley are interviewed on various topics, according to KSLV. KSLV has submitted a promotional announcement for the program which invites listeners to appear on the program or to suggest topics for discussion. Also included during the week of September 5 through 11, 1972, was a one-half hour live program broadcasting the Mexican Independence Day ceremonies from the Monte Vista High School. KSLV has also submitted several examples of public service an-

[4] Although KSLV did not undertake in its last renewal application to include "Latin-American rhythm" music in its entertainment format, it states that it has instructed its announcers that such music must constitute ten per cent of the music played. RPLR alleges that this change was made after it filed its petition. However, such changes in entertainment format during the license term are well within the licensee's discretion, *KORD, Inc.* 31 FCC 85 (1961). RPLR also questions the ten per cent figure and sets out the number of Spanish, Mexican and Latin-American songs played by KSLV during specified periods. However, the phrase "Latin-American rhythm" is not limited to songs and includes musical selections without words. In any event, we cannot compute the percentage of Mexican, Spanish or Latin-American selections because the number or duration of other selections broadcast is not stated.

[5] RPLR states that the figure should be 1.61 per cent, not 1.98 per cent. RPLR's figure appears to be correct, but such minor deviations are not significant, especially when coupled with the licensee's performance as to "other" programming.

nouncements it has broadcast. RPLR has not questioned KSLV's representation that 15 percent of its broadcast week is news and that 40 percent of the news is devoted to local and regional news.

10. As to the "Frito Bandito" incident, KSLV alleges that the name was mentioned by a caller to the station on a call-in program called "Party Line," on December 15, 1971. A caller identified himself as Speedy Gonzales who said he was calling "to wish the Frito Bandito a Happy Birthday." The announcer on duty is alleged to have replied, "Okey, goodbye." The announcer then stated "That's impossible. The Frito Bandito's birthday was yesterday." KSLV further alleges that it has not run any commercial announcements referring to the Frito Bandito. As to the 19 demands made by RPLR, KSLV asserts that the demands "cannot be implemented within the economic and demographic composition of the San Luis Valley." KSLV has not addressed itself to the allegations as to its editorial. We note, however, that it closed with the following statement: "Any reasonable person or organization wishing to offer a rebuttal to this commentary will be provided equal time." RPLR has not alleged that it requested and was refused time to respond to the editorial.

11. Unlike Section 309 of the Communications Act, Section 312 does not create rights in third parties and gives us discretionary authority to institute revocation or cease and desist proceedings. *Gulf Television Company*, 11 RR 460 (1954), *Petersburg Television Corp.*, 12 RR 1395 (1955), *Sioux Empire Broadcasting Co., Inc.*, 17 RR 727 (1958), *Salem Broadcasting Company*, 1 FCC 2d 655, 6 RR 2d 160 (1965), *C. J. Community Services, Inc.* v. *FCC*, 246 F. 2d 660 (D.C. Cir., 1957), *Tomah-Mauston Broadcasting Co., Inc.* v. *FCC*, 306 F. 2d 811 (D.C. Cir. 1962). We are particularly reluctant to use a revocation proceeding to intrude into the area of a licensee's programming judgments. We believe, as a general rule, that it is preferable to consider such matters at renewal time when the licensee's entire three-year performance can be considered, rather than portions of that performance, *National Anti-Vivisection Society*, 2 RR 2d 166 (1964). The isolated "Frito Bandito" incident is not of sufficient import to warrant a hearing in any event. Additionally, the broadcast of an editorial considered "demeaning" by RPLR is not the basis for a revocation proceeding. Licensees are free to take editorial positions with which their listeners, or portions of them, disagree or consider demeaning. In this regard, we also note the invitation broadcast with the editorial seeking contrasting view and the absence of any allegations raising a fairness doctrine question. We are, of course, concerned when a licensee has not implemented its representations to us as to its programming. In *Leflore Broadcasting Co.*, 36 FCC 2d 101, 24 RR 2d 953 (1972), we called for the early filing of a renewal application based in part, on allegations that the licensee was not presenting the non-entertainment programming that it had set out in its last renewal application for the current license term. The allegations in that case were supported by logs of the licensee's broadcasts made by the petitioners. RPLR states only that KSLV does no programming that can be classified as public affairs based on RPLR's review of prior applications and its "contacts in the community." Similarly, as to public service announcements, RPLR made ". . . their observations from listening to KSLV

and their contacts in the listening public and alleges that KSLV has failed to develop and broadcast meaningful public service announcements." We do not believe that such generalized statements, in the face of rather specific allegations from the licensee, are of sufficient weight to counterbalance our reluctance to use revocation proceedings to challenge a licensee's programming performance during the license term.

FAIRNESS DOCTRINE

12. RPLR alleges that KSLV has dealt with "the Anglo farmer's view of agricultural questions," but has not presented other points of view on the subject, apparently attempting to raise a question as to KSLV's compliance with the fairness doctrine. However, it has not submitted the date and the time of the broadcast of any particular controversial issues of public importance; the basis for the claim that the issues were controversial and of public importance; an accurate summary of the view broadcast; the basis for its claim that the station has not broadcast contrasting views on the issues in its overall programming; or indicated whether the station has either afforded or intends to afford a reasonable opportunity for the presentation of contrasting views on those issues. Thus, RPLR has not submitted sufficient information to raise a question as to KSLV's compliance with the fairness doctrine, *Allen C. Phelps*, 21 FCC 2d 12, 17 RR 2d 1117 (1969), *FCC Procedure Manual*, 37 F.R. 20510, 20512 (1972).

DISCRIMINATION IN EMPLOYMENT

13. At the time RPLR's petition was filed, KSLV had five full-time and two part-time employees. RPLR states that only the two part-time employees are Spanish surnamed and that they are "tokens." RPLR alleges that when the station hired a program director in December of 1971, it selected an out-of-town "Anglo" without consulting community groups such as RPLR. RPLR also alleges that new employees are required to have, as a minimum, a third-class operator's license. This, according to RPLR, shows that the station has no commitment to train personnel.

14. In opposition, KSLV first refers to material in its 1971 renewal application, which states that all personnel at the station were hired locally as of the date of filing. The application also states that the station adopted a non-discrimination policy when it was established in 1954, and that through the years the station has had several employees with Spanish surnames. KSLV further states that the last four part-time announcers hired by the station have been Spanish surnamed, and that these have obtained provisional operator's certificates while working at the station. Two of the four are presently employed, one is serving in the Marine Corps, and the last is attending the University of Colorado. There are "Anglo" full-time announcers on the staff who started as part-time announcers. The full-time, out-of-town person hired by the station subsequent to the grant of the renewal application was hired as a full-time announcer, not as program director, according to KSLV. The announcer's job became vacant when an existing announcer was promoted to program director. The man hired was the

best qualified for the job, as a graduate of the University of Colorado and the Columbia School of Broadcasting with prior announcing experience. KSLV asserts that this person filed his application for the job in November of 1971 and that he was hired the following month. KSLV states that it could not have consulted with RPLR at that time because it was not aware of RPLR's existence until January 1972. RPLR does not controvert these allegations in its reply. Rather, it again notes that there are no Spanish-surnamed employees in what it terms "decent paying, responsible position(s)", only part-time announcers.

15. RPLR has not alleged that any pay differentials exist between Chicano and other employees in comparable positions at present or in the past. Nor does it allege that there are any differences in treatment as to promotions, fringe benefits, management-employee relations, or in other areas of possible discriminatory employment practices. Rather, RPLR relies generally on the number of Chicano employees, their positions as part-time announcers at the station, and the hiring of a full-time "Anglo" announcer prior to the filing of its petition. With the exception of this latter person, it appears that all of the station's employees are local people who have been trained at the station. Our records confirm that provisional operator certificates have been issued to four Spanish-surnamed individuals who work or worked at the station.[7] Two of the certificates were issued well before the filing of RPLR's petition. It could not be expected that one of the part-time employees now at the station, both of whom are high school students, could have been promoted to a full-time announcer during the school term. It appears, nonetheless, that the licensee has trained four Spanish surnamed persons, just as it has trained other employees. This, in our view, is a considerable effort when the very small size of the station's staff is considered. In the context of a renewal proceeding, we have stated that:

> . . . simply indicating the number of minorities employed by a licensee, without citing specific instances of discrimination or showing a conscious policy of exclusion, is insufficient to warrant designating a license renewal application for evidentiary hearing. (*Avco Broadcasting Corporation*, 39 FCC 2d 4, 9, 25 RR 2d 840, 847 (1972)).

See also, *Great Trails Broadcasting Corporation*, 39 FCC 2d 39, 25 RR 2d 827 (1972), *Mahoning Valley Broadcasting Corporation*, 39 FCC 2d 52, 25 RR 2d 873 (1972), *Stone* v. *FCC*, 466 F. 2d 316 (1972). We see no reason for applying a less stringent standard in a revocation context, giving the demands on our resources. Accordingly, in view of the above, the very small size of the station's staff, and the generalized nature of RPLR's allegations as to discrimination, we conclude that no further action is warranted.

16. In view of the above, the petition for the revocation of license of Station KSLV, filed May 3, 1972, by Radio Para La Raza, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[7] Those to whom the provisional certificates were issued are: Tim Torres, PC3–15–816, issued June 1, 1971; Jerome Salazar, PC3–15–945, issued November 11, 1971; David Lira, PC3–15–1083, issued April 10, 1972; and Thomas Ernest Torres, PC3–15–1271, issued October 16, 1972.

F.C.C. 73–477

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BROADCASTING CO. (WGHP–TV), HIGH POINT, N.C. For Renewal of Broacast License	Docket No. 18906 File No. BRCT–574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT–4302

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 15, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. By Order, FCC 70–706, 35 FR 11277, published July 14, 1970, the Commission designated the above-captioned mutually exclusive applications for hearing on a standard comparative issue. Thereafter, in a Memorandum Opinion and Order, 26 FCC 2d 998, 20 RR 2d 689, released November 17, 1970, the Review Board added a promise versus performance issue against Southern Broadcasting Company (Southern), licensee of television Station WGHP–TV in High Point, North Carolina.[1] The Commission redesignated the applications for hearing by Order, FCC 72–147, 37 FR 4304, released February 24, 1972. At the hearing, Southern submitted about 50 exhibits pursuant to the promise versus performance issue, and these exhibits were received in evidence (Tr. 3998 and 4000). Contending that the exhibits contained erroneous information concerning the amount of Southern's local live public interest programming, Furniture City Television Company, Inc. (Furniture City) petitioned the Review Board for the addition of an issue to determine whether Southern deliberately misrepresented the facts pertaining to its program performance at Station WGHP–TV. In partial support of its request for enlargement of issues, Furniture City attached to its petition a copy of page 22 of Southern's Exhibit No. 102 which is as follows:

Week of April 4–10, 1965

Proposed local live hours	[2]33:10
Actual local live hours	32:07

[1] The issue reads as follows:
To determine whether Southern Broadcasting Company failed to carry out representations made in Docket No. 13072 as to programming, staffing, studios and equipment in operation of WGHP–TV, High Point, North Carolina, and, if so, the effect of such conduct on the requisite and comparative qualifications of Southern Broadcasting Company to be a Commission licensee.

[2] With respect to the figures set forth in this manner, the figure to the left of the colon represents hours, and the one to the right of the colon, minutes.

Category	Proposed hours	Actual hours
Religious	5:20	6:20
Agricultural	7:40	4:35
Educational	8:30	9:00
News	9:30	8:47
Discussion	4:25	17:40
Talk	8:00	14:29
Total	43:25	60:51

In addition to the above, Exhibit No. 102 contains other tables setting forth the same type of weekly statistical information concerning WGHP–TV's programming for the rest of the year 1965. Tables with the same statistical information were also included for each month of that year. The proposed hours and actual hours for each of the six program categories specifically mentioned above, and also for each of the weekly and monthly tables, included network and recorded as well as live programming. Southern claimed a total of 1544 hours and 34 minutes for the year 1965 for "Actual Local Live Hours" in its Exhibit No. 102.

2. Concluding that the allegations of Furniture City's petition, insofar as they related to Southern's representations concerning its local live public service programming, had merit, the Review Board on January 2, 1973 [3] added the following issue: [4]

To determine whether Southern Broadcasting Company (WGHP–TV) misrepresented to the Commission material matters with respect to its programming exhibits and, if so, whether such conduct reflects on the applicant's basic or comparative qualifications.

In adding the issue it stated:

"8. The Review Board is of the opinion that Furniture City has made sufficient allegations of fact concerning Southern's program exhibits to warrant further exploration at the hearing under a separate issue. It appears from Furniture City's allegations that Southern may have inflated its live local public interest programming figures in its exhibits. According to Furniture City's figures, Southern's logs for 1965 reveal 1167:56 minutes of local live public service programming, while Southern's exhibit reveals 1544:34 minutes. This disparity of 376:88 minutes raises a serious question of whether Southern misrepresented its live public service programming to put itself in a more favorable position for securing a renewal. While we have some reservations about how Furniture City arrived at these figures, we are still persuaded to add the issue because we do not find Southern's opposition pleading to be responsive and enlightening with respect to the specific allegations raised by Furniture City. . . ."

3. Southern now seeks review of the Review Board's addition of the misrepresentation issue.[5] Since its application for review was required under Section 1.115(e)(1) of the Commission's Rules to be filed by January 9, 1973, but was not filed until January 16, 1973, Southern also requests that its late filed pleading be accepted. In its motion for such relief, Southern asserts that the issue in question relates to material contained in the logs for one full year of a tele-

[3] Memorandum Opinion and Order, 38 FCC 2d 935, adopted December 27, 1972; released January 2, 1973.

[4] The Review Board refused to add other issues requested by Furniture City.

[5] Application for Partial Review of Order Enlarging Issues, filed January 16, 1973, and accompanied by a Motion to Accept Late Filing. Also before the Commission are: Broadcast Bureau's Opposition, filed January 24, 1973; Furniture City's Opposition, filed January 26, 1973; and Southern's Reply to Oppositions, filed February 2, 1973.

vision broadcast station, several exhibits already received in evidence which were based on the same year's logs, and transcripts of a hearing presently in progress; and that a thorough review of this material was necessary, in order to prepare properly the subject application for review. Southern further notes that its principal counsel was out of the country until January 9, 1973, and that the individual who had prepared the exhibits in question was out of town and did not receive a copy of the Review Board's Order until January 8, 1973. We find that good cause has been shown for the late filing, and we conclude that the application for review should be accepted and considered on the merits.

4. In its application for review, Southern asserts that Furniture City incorrectly interpreted Southern's statement of actual live hours to apply only to the public service category whereas it had made no such representation. In fact, Southern states, the figure recited in that portion of its Exhibit which Furniture City cited in the petition for enlargement of issues (32:07) is Southern's calculation of the total *local live programming* (not local live public service programming) broadcast during that particular week, including public affairs, news, sports, and entertainment. Southern further contends that the figure is presented as a comparison with the figure of 33:10 of local live programming (which also included public affairs, news, sports and entertainment) which was proposed in the application for the license received in 1963. Southern urges that the Review Board added the misrepresentation issue by reason of its erroneous belief that Southern's figures regarding local live programming were limited to its public service programming, and that the Review Board's decision should therefore be reversed.

5. Although the Broadcast Bureau opposed the request for enlargement of issues before the Review Board, it now opposes Southern's application for partial review of the order enlarging issues, citing *Home Service Broadcasting Corp.*, 25 FCC 2d 759 (1970). Furniture City in its opposition contends that the most important question to be explored under the promise versus performance issue involves the licensee's commitments in regard to local live programming in the categories of agriculture, education, discussion and talk programs, that therefore inclusion of entertainment programs in the "actual local live hours" is not responsive to the said issue, and that Southern's failure to disclose that entertainment programming was included in the total constituted a misrepresentation. Furniture City suggests that Southern's exhibits could have led the trial Judge to believe that the "total" referred only to public service programs because contiguous thereto Southern listed "the actual hours of broadcasting (local, network and recorded) in each of the public service categories in its Exhibits."

6. In its reply, Southern asserts that the phrase "local live hours" was used to characterize the total figure including entertainment, without expressly so indicating, not only by Southern in its exhibits but also by the Review Board in its Memorandum Opinion and Order adding the promise versus performance issue.[6] Southern also notes that

[6] 26 FCC 2d at pp. 1001 and 1003, footnotes 3 and 5.

in a table contained in that portion of the Initial Decision released March 10, 1961 [7] quoted by Furniture City in its opposition (Attachment C), the only breakdown of "live" programming is "Live Commercial" and "Live Sustaining," and there is no category for "local live entertainment"; that of the weekly 118:05 proposed broadcast hours, Southern's proposed programming was shown as 11.22% Live Commercial and 16.87% Live Sustaining or a total of 28.09% live programming; and that consequently the table discloses as proposed weekly local live programming 33 hours and 10 minutes which is the figure set forth in its Exhibit 102. In further refutation of Furniture City's contention that the figures submitted were misleading, Southern quotes from the transcript of the hearing for December 7, 1971 (3051–3052) in which its Mr. Lombardo said with reference to Southern Exhibit 102, page 46 (covering the period September 1–September 28, 1965), that the local live hours are totaled "from all programming that was local live in nature." Also with regard to Furniture City's contention that the total local live programming proposed was 37 hours 15 minutes, Southern responds that Furniture City incorrectly showed as local live programming 3 hours and 50 minutes which were actually Wire Commercial or Wire Sustaining; that Furniture City also incorrectly claimed that Southern proposed to broadcast a 15 minute local live sports program six days a week instead of five; and that when these figures (totaling 4 hours and 5 minutes) are subtracted from 37 hours and 15 minutes, the correct total, as claimed in Southern's exhibit, is 33 hours and 10 minutes.

7. In reaching the determination to enlarge the issues in this proceeding by the addition of a misrepresentation issue, the Review Board relied on its interpretation of Southern's Exhibit 102 as indicating that Southern claimed 1544:34 hours of public service programming (religious, agricultural, educational, news, discussion, and talk) in 1965. Since Southern's logs revealed only 1167:56 hours of local live public service programming, the Board concluded that a discrepancy existed which required exploration at the hearing. This may have been a reasonable "first glance" interpretation because Southern's method of charting the hours in this Exhibit was to show the totals of proposed and actual local live hours (which included entertainment programming) and then below to show by category, the proposed and actual hours of all public service programming (but not entertainment). However, we are not concerned here with whether the Exhibit was lacking in clarity or could have been more artfully drawn; or even whether, as Furniture City claims, the Exhibit was not fully responsive to the promise versus performance issue. The dispositive question here is whether the misrepresentation issue resulted solely from a misunderstanding of the true facts so that further exploration in the hearing process would serve no useful purpose. See *Home Service Broadcasting Corp. et al.*, 25 FCC 2d 759 at 760, par. 6 (1970).

8. In this connection we note first that in the proceeding which ultimately resulted in a grant of the initial license to Southern's predecessor, the Hearing Examiner concluded that the applicant proposed

[7] 33 FCC 497 at 589. This relates to the original comparative proceeding in Docket No. 13072.

"substantial time for live programming in the categories of religion, agriculture, education, news, discussion, and talks, as well as in the field of entertainment" (33 FCC 497, 651, par. 136); and that the Commission found that the applicant was entitled to a preference for "greater attention to local live programming generally" (33 FCC at 480). Since the showing of all proposed local live programming, including entertainment programming, was considered to be significant in the original comparative proceeding, Southern's inclusion of entertainment in its totals of proposed and actual local live hours was clearly appropriate under the promise versus performance issue.

9. Moreover, our examination of the pleadings and the record fails to provide any significant support for the assertion that Southern attempted to mislead the Commission into believing that the figures given for "Actual Local Live Hours" represented actual local live *public service* programming. The exhibit clearly identified the figures as "Actual Local Live Hours" and neither Furniture City nor the Review Board refers to any statement by Southern which may reasonably be construed as a representation that entertainment programming was not included or which indicates an intention to deceive the Commission. Furthermore, as Southern points out, the figures for "Actual Local Live Hours" were set out for the purpose of comparison with the category "Proposed Local Live Hours" which included entertainment. That this latter category included local live entertainment and that the correct figure for such programming was approximately 33:10 weekly as claimed by Southern are supported by the record. Not only did the Hearing Examiner so hold in the original proceeding (see paragraph 6, *supra*), but the Commission in making the grant to Southern's predecessor expressly stated that with respect to "local live programs weekly" this applicant "proposes 33:10 hours." 33 FCC at 479, par. 26.[8] Thus, the record and the pleadings before us disclose no discrepancy between Southern's Exhibit No. 102 which reveals a total of 1544 hours and 34 minutes of *all* local live programming (including entertainment) and its logs which indicate 1167 hours and 56 minutes of local live public service programming (excluding entertainment).

10. For the reasons set forth in *Home Service Broadcasting*, *supra*, we do not propose to grant review of an interlocutory order of the Review Board which enlarges the issues in a hearing case unless clear error was made as to the underlying facts or other exceptionally meritorious circumstances are present. In this case a misrepresentation issue was added even though Southern had correctly labelled the figures supplied in its Exhibit No. 102 as representing the amount of local live programming; it at no time claimed that the figures represented local live *public service* programming; and no valid factual allegations were submitted to, or relied upon, by the Review Board to indicate an intent to mislead or deceive the Commission. At most there appears to have been a misunderstanding of the representations made by Southern in its Exhibit. In these circumstances, we are persuaded that no useful

[8] As demonstrated by Southern in its reply pleading (see paragraph 6, *supra*), Furniture City's contention that 37 hours and 15 minutes of local live programming weekly had been proposed by Southern's predecessor was based on an erroneous characterization of certain programs and is manifestly incorrect.

purpose would be served by a hearing on this issue and that the deletion of the issue is warranted.

11. Accordingly, IT IS ORDERED, That Southern's Motion to Accept Late Filing IS GRANTED.

12. IT IS FURTHER ORDERED, That the application for review filed by Southern IS GRANTED; and that the issue added by the Review Board's Memorandum Opinion and Order released January 2, 1973, 38 FCC 2d 935, 942, Paragraph 15, IS HEREBY DELETED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-344

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

In Re Request by
TELEPROMPTER CORP., NEW YORK, N.Y.
For Advisory Opinion

MARCH 29, 1973.

GOVERNOR RAYMOND P. SHAFER,
Chairman of the Board,
TelePromTer Corporation,
50 West 44th Street,
New York, New York 10036.

Re: File No. 1-DSE(R)-P-73.

DEAR MR. SHAFER: This is in response to your letter filed March 13, 1973, on behalf of TelePrompTer Corporation requesting an advisory opinion as to the applicability of Section 319(a) of the Communications Act to procurement of a transportable receive-only earth station in connection with the above-captioned application (developmental/experimental), or a waiver pursuant to Section 319(d). As grounds for the latter request, it is stated that procurement of the earth station is necessary at this time if the earth station is to be available for the proposed initial operations of the facility for the National Cable Television Association convention in June, 1973, since substantial lead time is required by the manufacturer to meet that deadline.

The Commission is of the opinion that the public interest would be served by a grant of your request. Section 319 does apply to procurement of a transportable earth station of this nature, particularly in view of the proposed uses. A partial waiver of Section 319 is hereby granted pursuant to Section 319(d). We stress, however, that this action does not constitute any determination on TelePrompTer's qualifications or on the merits of its pending application for a construction permit covering the proposed earth station. Any contractual commitment undertaken by TelePrompTer in advance of such Commission action is entirely at TelePrompTer's own risk.

Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

40 F.C.C. 2d

109-040—73——5

F.C.C. 73-370

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
UTILIZATION OF SPECIAL TELEVISION NETWORK IDENTIFICATION SIGNALS BY NETWORKS

APRIL 4, 1973.

DEAR _____: This is in response to a letter of February 28, 1973, signed by representatives of American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting System, Inc. (CBS), National Broadcasting Company, Inc. (NBC), and Public Broadcasting Service (PBS) informing the Commission of a plan to commence the utilization of special television network identification signals, to be transmitted on line 20 of field 2 of the vertical blanking interval "consistent with the broad intent of Section 73.682 (a) (21) of the rules concerning the transmission of television test, reference and cue and control signals." It is contended that the transmission of program identification signals in the vertical interval is specifically permitted by a letter from the Commission to CBS in 1962 which, in connection with its contemplated use of CBS of "similar signals" stated that they might be utilized without specific Commission authority. However, to the extent the Commission may believe that specific authority is required for their transmission in the present instance, a grant of such authority is requested.

The letter further explains that the program identification signal would be embodied in a digital stream of pulses which, among other things, would contain a time code "to 'cue', control, or verify the operation of a station's video tape machine, telecine projector, automatic sequencer, etc."; apparently in the system the networks have developed, the cue and control functions specifically authorized by § 73.682(a) (21) are inseparable from the program identification function.

The letter lists six purposes which might be served by automatic means with the use of the line 20 signal, which are summarized below. We have provided the underlining.

(1) Transmission of clearance information between *stations* and *networks* on programs broadcast.

(2) Eliminating tedious bookkeeping procedures involved in *stations* reporting of the carriage of programming to *networks*.

(3) Improving speed and accuracy of *network* payments to *stations* and billings to agencies.

(4) Computing information for FCC reports, e.g., the number of stations carrying certain network political broadcasts.

(5) Enabling CATV systems to comply automatically with FCC simultaneous non-duplication requirements.

(6) Providing verification aid to network broadcast monitoring services.

The letter suggests that the first three of the above listed purposes could be accomplished with a "program identification" signal approved by the Commission for CBS in 1962. The last three, it states, "constitute additional broadcast related uses".

This last observation is particularly pertinent to the question of whether television stations are free to radiate a "program identification" signal on line 20, on the basis of an interpretation of § 73.682(a)(21) furnished by the Commission in 1962, as it appears to recognize the limited context in which that interpretation was made—that, like the cue and control signals originated by the network, the program identification signal proposed by CBS was "related to the operation of the television broadcast station", and consequently intended for interception and use by the broadcaster. Any radiation of the signal, while permitted, was, in fact, incidental and unnecessary for the accomplishment of its purpose.

The concept of a program identification signal, incorporated in the television broadcast signal, purposely radiated and intended for reception and use by persons other than the broadcast licensee was established in 1970 by our Report and Order in Docket 18605, which found this use of the television signal to be in the public interest, but authorized program identification transmissions only pursuant to § 73.682(a)(22) of our Rules.

Quite apart from questions as to the method employed in the subsequently authorized system of program identification, it is apparent, even from a cursory reading of the comments filed by broadcast organizations, the networks and broadcasters in the proceeding in Docket 18605, these parties fully recognized that the program identification function with which that proceeding was concerned represented a non-broadcast use of the television signal which differed substantially from any non-broadcast use which the rules then authorized. This being the case, we are rather at a loss to understand how the networks, in this instance, could have assumed that they were free to proceed with the development and use of a program identification transmission system in the vertical interval which they indicate is well on the way toward implementation.

We would emphasize that we are concerned only with the uses with which a *radiated* signal on line 20 may be put. Such internal uses as may be made of the signal (as between a network and its affiliates) would normally not be subject to the jurisdiction of the Commission. Thus, station/network program identification and the related purposes listed in your first three proposed uses may be undertaken without authorization by the Commission. However, the radiation of the signal is not necessary to achieve these purposes, and, with modern technology, we would consider as untenable any argument that its radiation and subsequent use is an incidental and unavoidable consequence of its primary use by the broadcaster. A rather obvious location for network/station signals, consistent with the efficient employment of vertical interval spectrum, is on either line 18 or 19, where they could exist compatibly with the transmitter test signals required by § 73.676(f) of our rules for television stations operating by remote control. The

employment of line 20 for the network program identification signal appears necessary only if it is intended to be radiated, received and utilized by persons who are obviously not members of the broadcast audience and such use without prior Commission authorization will subject stations engaging in such practices to appropriate sanctions.

Any proposed non-broadcast use of the broadcast signal, whether offered as a "broadcast related" use, or not, is a matter of concern to the Commission, as it should be to broadcasters, if the basic integrity of the broadcasting system is to be preserved. The Commission has authorized such uses, on a permanent basis, only pursuant to rules limiting and defining these uses, adopted after formal proceedings which fully explored the public interest and other pertinent aspects of each contemplated use.

It might well appear, after full consideration of all the factors involved, that the vertical interval logically should be designated as the location for a radiated program identification signal, and that signals radiated in the vertical interval should be authorized for program control in CATV systems, and perhaps for other uses. However, the determination of what uses shall be authorized, and what portion of the vertical interval is to be devoted to specific uses cannot be undertaken on an informal, ad hoc basis, or implemented by a simple interpretation of existing rules.

It is regrettable that before undertaking those substantial commitments toward the implementation of their system, which they indicate have been made, the networks did not recognize that specific rule amendments might be necessary to authorize its employment for the contemplated purposes, and have filed a petition for rule making in accordance with recognized procedures.

As the networks are aware, an Ad Hoc Subcommittee of the Joint Committee for Intersociety Coordination, an industry group, is presently studying the possible uses of "ancillary" signals in broadcast transmissions, including those which may be transmitted in the television vertical interval, with the intention of presenting the Commission with a recommended plan under which meritorious uses may be effectively and compatibly integrated into the broadcast signal. Presently on file with the Commission is a petition submitted by the National Bureau of Standards (NBS) proposing vertical interval transmissions of time and frequency information. The signal proposed by NBS has potential communications capacity for other uses. We understand that the Electronic Industries Association is preparing to present a petition seeking rule changes to permit the transmission of a Vertical Interval Reference Signal, whose use is expected to result in improved color picture transmission. Under these circumstances, we consider it particularly inappropriate that unilateral action should be contemplated by any party which, if effectuated, might establish a pattern of use effectively removing some portion of the vertical interval from consideration in any subsequent formal determination by the Commission of permissible uses of radiated vertical interval signals, and the line and field assignments for these uses.

While § 73.682(a)(21) of our rules presently confers authority on television broadcast stations to radiate certain signals in the vertical

interval primarily intended for network/station communications, we consider that such authority may be subject to termination should the Commission, after formal proceedings, determine specific uses to be made of signals radiated in the vertical interval. In any such determination, no weight will be accorded to the continuation of any service established in reliance on the off-the-air reception of the network/station vertical interval signal.

Commissioner Robert E. Lee absent; Commissioner Reid concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73R–161

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of VOGEL-ELLINGTON CORP. (WHOD), JACKSON, ALA. For Construction Permit	Docket No. 18897 File No. BP–17867

ORDER

(Adopted April 17, 1973; Released April 19, 1973)

BY THE REVIEW BOARD:

1. The Review Board having under consideration the Initial Decision herein, the exceptions and briefs, and the request for oral argument, filed with respect thereto;

2. IT IS ORDERED, That oral argument before a panel of the Review Board IS SCHEDULED for May 22, 1973, commencing at 10:00 a.m., in Room 650, 1919 M Street, N.W., Washington, D.C.; that the parties who within five days after release of this Order file written notice of intention to participate in oral argument (Section 1.277(c) of the Rules) shall each be allowed 20 minutes for argument; that counsel for the Broadcast Bureau Chief, may reserve part of his time for rebuttal; and that the order of appearance shall be:

Chief, Broadcast Bureau,
Vogel-Ellington Corporation (WHOD).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-476

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of VOICE OF REASON, INC. (KICM), GOLDEN, COLO. For Construction Permit	Docket No. 18710 File No. BP-18553

MEMORANDUM OPINION AND ORDER

(Adopted May 9, 1973; Released May 14, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. This proceeding involves the application of Voice of Reason, Inc. (VOR) for authority to operate the former facilities of standard broadcast Station KICM, Golden, Colorado. By Initial Decision released March 23, 1971 (37 FCC 2d 714), Hearing Examiner (now Administrative Law Judge) Basil P. Cooper recommended a denial of VOR's application. The Review Board, upon exceptions to the Initial Decision, also concluded that VOR's application should be denied (37 FCC 2d 686). By Memorandum Opinion and Order, released February 23, 1973 (39 FCC 2d 847), the Review Board also denied a petition for reconsideration by VOR.

2. Presently before us are the following: (a) a motion for acceptance of application for review filed on April 2, 1973, by VOR; (b) a response thereto filed on April 5, 1973, by the Chief, Broadcast Bureau; and (c) a reply to the Bureau's response filed April 12, 1973, by VOR.

3. VOR's application for review of the above described Review Board actions in this case was due on March 26, 1973, but was not filed until April 2, 1973. Thus, VOR now requests us to accept this late-filed application for review, pointing out that on March 26, 1973, it filed a notice of appeal with the U.S. Court of Appeals for the District of Columbia Circuit rather than an application for review with the Commission; that this unfortunate choice of procedure was predicated on an inadvertent misreading of Section 405 of the Communications Act; and that, as a result, its application for Commission review is now one week late. VOR also asserts that the denial of the motion to accept would foreclose Commission consideration of the merits of its application for review and, accordingly, would be an unduly harsh result in view of the length of time during which it has faithfully prosecuted its application for a construction permit in this proceeding. Moreover, VOR contends that no private or public interests would be impaired by grant of the motion. The Broadcast Bureau opposes the requested relief. However, should the Commission accept the late-filed application for review, the Bureau then requests that the time for responding

to the application for review be extended to run from the issuance of the Commission's Order taking such action.

4. VOR's motion will be granted and the application for review accepted. We are of the opinion that the amount of time here involved will neither seriously undermine the orderly disposition of this proceeding nor prejudice the rights of parties. Our determination herein should not be construed as detracting from the Commission's procedural requirements which are designed to promote the public interest by requiring a point of finality in the filing of pleadings. Instead, the action here taken is based upon the circumstances of this particular case and is designed to promote the public interest by permitting VOR to be heard on any and all issues that may be of decisional significance.

5. Accordingly, IT ORDERED, That the motion for acceptance of application for review filed on April 2, 1973, by Voice of Reason, Inc. IS GRANTED, and the associated application for review IS ACCEPTED.

6. IT IS FURTHER ORDERED, That the dates upon which opposition and reply pleadings to VOR's instant application for review must be filed, as prescribed by Section 1.115 of the Commission's Rules, are to be computed from the release date of this document, rather than from the actual filing date of VOR's application for review.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-501

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WESTERN UNION TELEGRAPH CO. For Authority To Construct an Earth Station Near New York, N.Y., To Provide Domestic Communications Satellite Service	File No. 1-DSE-P-71

ORDER AND AUTHORIZATION

(Adopted May 9, 1973; Released May 11, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it the above-captioned application of Western Union Telegraph Company (Western Union) for authority to construct an earth station in Vernon Township, New Jersey, in the area of New York, New York, and for approval of its technical characteristics. The application was originally filed on July 30, 1970 as part of Western Union's domestic satellite system proposal submitted pursuant to the first *Report and Order* in Docket No. 16495 (22 FCC 2d 86), and was most recently amended on March 7, 1973. Western Union proposes to use the earth station in connection with the satellites previously authorized to it by our *Order and Authorization* issued on January 18, 1973 (FCC 73-26, 38 FCC 2d 1197), and six other earth stations,[1] to provide domestic communications satellite services. It has requested that the instant application be considered prior to the other earth stations because its construction schedule calls for construction to commence first at the New York site.

2. The New York earth station would have both a communications and a telemetry, tracking and control (TT&C) capability. The communications installation will have a 50-foot diameter antenna, and will be equipped initially for transmission of two message carriers and one video carrier in the 5925-6425 MHz band and for reception of five receive frequencies (four message and one video) in the 3700-4200 MHz band. The TT&C installation will have a 32-foot diameter antenna. The estimated cost of the earth station is $7,016,442.

3. In the *Order and Authorization* granting Western Union's satellites (38 FCC 2d 1197), we found that Western Union is legally, technically, financially and otherwise qualified to undertake the construction and operation of its proposed domestic satellite system, that the facilities would not have an adverse impact on Western Union's

[1] The other earth stations (Files Nos. 2, 3, 4, 5, 11 and 71-DSE-P-71) would be located near Los Angeles, Atlanta, Portland (Oregon), Dallas, Chicago and Honolulu.

existing services, and that its proposal is generally consistent with the policies adopted in Docket No. 16495. There is no active petition to deny the instant application, and all frequency conflicts have been resolved. Upon consideration of the radiation hazard and other environmental factors set forth in pages V–1–9 of the application, we are satisfied that Western Union has made a satisfactory showing in this respect. We are also of the view that Western Union has made a sufficient showing with respect to interconnection of its terrestrial facilities with the facilities proposed by other domestic satellite applicants. In so concluding, we are mindful of the circumstance that Western Union has only a very limited terrestrial capacity available for use by others and that most domestic satellite applicants will be relying primarily on the local loop and interexchange facilities of the telephone companies for the purpose of originating and terminating services to their customers.

4. We find that Western Union is legally, technically, financially and otherwise qualified to construct the proposed earth station and that a grant of the instant application would serve the public interest, convenience and necessity.[2]

5. Accordingly, IT IS HEREBY ORDERED that the above-captioned application IS GRANTED and Western Union IS AUTHORIZED to construct the earth station in conformity with the specifications and parameters set forth in the attached construction permit.

6. IT IS FURTHER ORDERED that the construction of the earth station shall be completed in accordance with the technical specifications listed herein, no later than 18 months after the date of issuance of this authorization and that failure to complete construction within such time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission upon good cause shown.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] While the application makes a general request for certification as necessary pursuant to Section 214 of the Communications Act, we think that Section 214 authorization should be sought by way of a separate application.

F.C.C. 73-514

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE WESTERN UNION TELEGRAPH CO., NEW YORK, N.Y. Consolidation of 11 Public Telegraph Offices in the Borough of Brooklyn, N.Y., Into a Single Public Message Center	File No. TD 20157

MEMORANDUM OPINION AND ORDER

(Adopted May 16, 1973; Released May 22, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING.

1. On Sept. 27, 1972, the Commission adopted as its Decision in Docket No. 19267 the findings and conclusions of the Recommended Decision and Order of the Chief, Common Carrier Bureau, released June 7, 1972 (37 FCC 2d, 813 :1972). This proceeding concerned specifically an application (TD-17972) filed by The Western Union Telegraph Company to discontinue 22 company operated offices in the lower Manhattan area of New York City, with alternate service to be provided essentially through a new proposed Public Message Center to be established at 18 John Street, but collaterally explored Western Union's plans and expectations with respect to the establishment of other PMC services in that city. In our Decision, authorizing discontinuance of 21 of the 22 offices requested, we expressed general approval of the concept of modern, well equipped and sufficiently staffed public message centers to serve other areas of New York City in lieu of numerous branch offices. However, we emphasized that the discontinuance of any additional branch offices must be preceded by an appropriate application from Western Union for Commission authorization which will be granted only upon a finding by the Commission that the telegraph needs of the public can be reasonably satisfied by a consolidation of branch office functions.

2. We now have before us an application (TD-20157) filed by Western Union to discontinue 11 public branch offices in the Borough of Brooklyn, New York, with alternate service to be provided through a Public Message Center established at 148 Pierrepont Street, 10 new Class 9 (wire operated) acceptance only agencies, 5 new class 9 delivery only agencies and 28 supplemental Class 10 (telephone operated)

agencies, most of which are presently in service.[1, 2] Pertinent data concerning the offices proposed for closure are shown below:

Office	Average daily load		Average/hour		Distance to PMC and nearest agency
	Counter	Messenger delivery	Counter	Delivery	
AL 9a-5p	11.4	0	1.4	0	1.4 mi. Acceptance agency ¼ mi.
AV 9a-5p	9.1	0	1.1	0	3.5 mi. Agency ½ mi.
BJ A.O	80.8	236			0.1 mi to PMC.
EW 9a-5p	23.2	66	2.9	8.2	5 mi to PMC. Delivery and acceptance agencies 1 mi.
FS 9a-5p	12.4	0	1.6	0	3.9 mi to PMC. 3 acceptance agencies within ¼ mi.
GN 9a-5p	15.7	62	2.0	7.8	5.8 mi. Acceptance agency in immediate neighborhood. Delivery agency approximately ½ mi.
KA 7a-12a	85.6	88	5.0	5.4	2.9 mi. 2 acceptance agencies nearby.
KH 8a-5p	40.9	228	4.5	25.3	6.8 mi from PMC. Acceptance agency immediate neighborhood. Delivery agency 1 mi.
PO 9a-5p	31.8	69	4.0	8.6	5.7 mi to PMC. Acceptance agency ¼ mi. Delivery agency ½ mi.
RA 8a-8p	38.3	0	3.2	0	4.3 mi to PMC. Acceptance agency ½ mi.
AJ[1]					

[1] Temporary emergency discontinuance authority granted Apr. 30, 1971.

3. Some 15 letters of protest and several petitions have been received from members of the public. The petitions and two letters are directed against RA office at 1420 Broadway, Brooklyn. Eleven letters are directed against four separate offices, AV (4), GN (5), KH (1), PO (1), and two letters express opposition to any change in the present branch office configuration in Brooklyn. All of the protests are general in nature, without containing factual information indicating that the provisions for alternate service proposed by Western Union are inadequate to reasonably meet the telegraph needs of the public.

4. As in Docket No. 19267 Western Union contends that the proposed consolidation of branch office functions in Brooklyn into a single PMC, with an augmented agency program, will overcome many of the service, staffing and facility problems now existing at the smaller and diverse offices, and would result in greatly improved service to the public. In the company's view, the larger, more flexible work force in the consolidated office would minimize the effects of unpredicted absenteeism and have the ability to absorb unexpected increases in workload, and the consolidated messenger force will permit messages to be sent out more promptly.

5. Specifications for the PMC at 148 Pierrepont Avenue call for a public office and operating room on the street floor of the building. The quarters will be of modern design, and appear to be adequate to amply accommodate members of the telegraph using public, and to provide for efficient operation and employe comfort. The customer area is approximately 11 feet by 36 feet in size, with 4 bandit barrier

[1] Although the application originally listed 19 branch offices, subsequent to its filing on October 25, 1972, permanent discontinuance of eight of the offices, AK, AQ, AZ, BD, BH, CT, RW and YG, has been authorized upon grant of separate applications filed under Section 63.64 of the Commission's Rules.

[2] 148 Pierrepont Street is in the heart of the main business district of Brooklyn (Borough Hall district) which is located near the northwest boundary of the Borough, and thus not situated centrally with respect to the geographic area to be served. The agencies, however (existing and proposed), are evenly distributed throughout the Borough.

type windows for the acceptance of telegraph messages. Both the public office and operating room will be open 24 hours per day, 7 days a week. While the application does not show the exact number of employes to be assigned to the PMC, the company states that a sufficient number of employes will be assigned to provide adequate and satisfactory service. Western Union has provided full documentation in support of its selection of the 10 new Class 9 public agencies, including maps, photographs and layouts, and copies of the agency contracts, meeting the other requirements of Part 63 of the Rules governing the conversion of Class I offices to agency operation.

6. In analyzing the service aspects of this proposal on basis of facts contained in the application file, we will first give attention to the over-the-counter service situation. As illustrated in paragraph 2, 5 of the 10 open offices are handling an hourly average of fewer than 3 messages during the normal business day. In each of these cases, there will be an alternate agency within 1 mile and in most instances within one-third mile or less of the branch office location. Four of the remaining offices accept on the average not more than 5 messages per hour, and in each case there is an alternate agency office within a relatively short distance. Only BJ branch office handles a substantial counter volume, and this office is now operating from the PMC quarters.[3] As noted heretofore, the 38 existing and proposed acceptance agency offices are distributed in an even manner throughout the geographic area of Brooklyn, and would appear to be sufficient in number to provide the public reasonable access to telegraph office facilities. In view of these factors, we do not believe that discontinuance of the branch offices would have substantial adverse effects on over-the-counter service to the public.

7. We will now turn attention to the message delivery and pickup aspect of the proposal. Only 6 branches in the Brooklyn group are designated as delivery offices to which messengers are normally assigned. The largest of these is BJ branch, which now occupies the PMC quarters, but several others, notably KH, also handle substantial delivery loads, and are a considerable distance from the PMC. Since the PMC is not centrally located, the company has established 5 new Class 9 (wire operated) delivery agencies throughout the Brooklyn area and within reasonable proximity of the existing delivery branch offices. These agencies will provide motor messenger service and will supplement the PMC messenger force as required, with traffic transmitted by wire to the agents from the PMC. The company estimates that about one-fourth of the messenger delivery load will be handled in this fashion. The agents (taxi firms) although carrying separate names are under common ownership and, according to the company, are experienced in making telegram deliveries as well as serving transportation needs of the public.

8. No comparative speed of service data are provided in the application to compare statistically the existing speed of physical delivery service that is now provided from the multiple branch offices with that

[3] Western Union has advised that, subsequent to filing this application, the BJ operations have been moved to the PMC location at 148 Pierrepont Street. The branch office formerly was at 127 Pierrepont Street, approximately 150 yards distant. Commission authorization is not required for such a move.

which is expected to result from the proposed consolidation. Western Union, however, in accompanying correspondence, expresses the view that messenger service will be substantially better than possible under the present configuration. This prospect is based on better control over the dispatching of routes and messenger performance which can be expected to result from consolidation of delivery functions, and the availability of delivery agents over a longer span of hours than observed by the branch offices. Motor messengers will be used for all physical deliveries, except in the immediate vicinity of the PMC, and the company's test runs show that the normal travel time to areas with significant telegram load should not exceed a maximum of 30 to 40 minutes. Current staffing plans call for assignment of 11 motor messengers at the PMC during the day tour, with a maximum of 13 on duty during the afternoon peak load period, 3 on the early night tour, and 1 messenger during the early morning hours after midnight. Based upon the study month of June 1972, the total combined messenger and telephone delivery load for the Brooklyn area is about 900 messages (including NL's) of which approximately 750, as illustrated by the table in paragraph 2, are being delivered by messenger and the remainder by telephone. Of the current messenger deliveries approximately 250 are overnight messages delivered on early morning routes before normal business hours. The company believes that upon effectuation of the proposed consolidation, with closer supervision and improved telephone facilities, a higher volume will be telephoned, ultimately reducing the messenger handlings to an estimated 550 per day, including overnight traffic.

9. Moreover, Western Union will, upon establishment of the PMC, reduce its physical delivery time standards for the Brooklyn area from 8 hours to 6 hours from time of filing to time of delivery.[4] According to the company, this in itself demonstrates its confidence that the public can expect an improved quality of delivery service to result from the consolidation of offices. While the company's plans for physical delivery coverage of Brooklyn appear reasonable, the critical factor, in our view, to achieving satisfactory delivery service is the assignment of sufficient messenger forces, and we shall expect Western Union to maintain a continuing surveillance of messenger force requirements at the PMC to meet, as a minimum, the improved service objective.

10. In our Decision in Docket No. 19267, we stated that operation of the initial PMC would be monitored closely, and that future authorizations of PMC's as substitute facilities for multiple branch offices would in a large measure depend upon the performance record of the initial installation. This public message center has been in operation since early December 1972, and our observations and studies have found the performance to be good. The results of speed of service studies show that the office has consistently been meeting the overall deliv-

[4] Western Union has stated that as each of the 7 proposed PMC's are established, the service standards for the affected area will be reduced to conform with the nationwide standards of 4 hours from time of filing for messages delivered by telephone or tieline and 6 hours for messages delivered by messenger. The current Western Union Tariff FCC No. 255 (p. 76) which sets forth the delivery time periods, contains exceptions for New York City providing for time periods of 6, 6 and 8 hours, except for specified zip code areas served by the PMC at 18 John Street to which the hinterland standards apply. When these delivery standards are not met customers are entitled to refund upon application.

ery standards of 4, 4 and 6 hours for telephone, tieline and messenger traffic respectively, with average service substantially below those maximums. There appears to be adequate staffing for public office operations, the physical appearance of the office is modern and pleasing, and our observations indicate that lobby space and number of serving windows are sufficient to accommodate customers without congestion or unreasonable waiting time. No service complaints have been filed with us involving this PMC. We did find, however, that the PMC was placed in operation before all lobby installation and decorating work had been completed, with some resultant temporary inconvenience to the public during completion of the job, and feel this should be avoided in the future.

11. As a condition of authorization of the initial PMC we required Western Union to submit and obtain approval of its staffing plan for the proposed PMC prior to implementation of such authorization. In view of our favorable experience with speed of service performance at the initial PMC, we will not require prior approval of the staffing plan for the instant PMC but will limit our requirement in this respect to submission by the company of a copy of its staffing formula and initial force assignment for our information and review. To assure, however, that the PMC is fully ready for operation before any of the branch offices are discontinued, we will condition the authorization for closure of the branch offices upon final completion of the public message center including installation of all operating equipment and facilities, and the lobby and counter facilities are made fully ready for acceptable public accommodation. We will also condition the grant upon final completion of the proposed agency arrangements, including training of agents in the handling of public message traffic.

12. In summary, we conclude that subject to the conditions specified herein, the public convenience and necessity would be served by authorizing the public message center proposed in Western Union's application TD–20157 as a substitute for the multiple branch offices listed in that application.

ORDER AND AUTHORIZATION

ACCORDINGLY, IT IS ORDERED, That the application (TD–20157) filed by Western Union on October 25, 1972, IS GRANTED UPON CONDITION that:

A. Western Union is not authorized to discontinue any of the offices involved in application TD–20157 until final completion of the public message center and proposed agency arrangements, including installation of equipment and other physical facilities and the training of employes and agents as may be necessary.

B. Western Union shall submit for our information and review a copy of its staffing formula for the PMC and initial force assignments at that facility no later than one week after the PMC is placed in operation.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–189

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WVOC, INC., BATTLE CREEK, MICH. MICHIGAN BROADCASTING CO., BATTLE CREEK, MICH. For Construction Permits	Docket No. 19272 File No. BPH–7005 Docket No. 19273 File No. BPH–7045

ORDER

(Adopted May 16, 1973; Released May 17, 1973)

BY THE REVIEW BOARD: BOARD MEMBER PINCOCK ABSENT.

1. The Review Board having under consideration the petition for leave to amend filed on April 12, 1973, by Michigan Broadcasting Company (Michigan), and the comments filed on April 23, 1973, by the Broadcast Bureau;

2. IT APPEARING, That acceptance of the amendment subject to the condition that Michigan should not gain any comparative advantage as a result thereof is appropriate;

3. IT IS ORDERED, That, subject to the condition set forth above, the above petition for leave to amend IS GRANTED and the amendment IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*